

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

MICHAEL CUENCA,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

KAISER FOUNDATION HEALTH PLAN,
INC., KAISER FOUNDATION HOSPITALS,
THE PERMANENTE MEDICAL GROUP,
INC., and SOUTHERN CALIFORNIA
PERMANENTE MEDICAL GROUP,

Defendants.

**AMENDED CLASS AND PAGA
SETTLEMENT AGREEMENT AND
RELEASE**

I. INTRODUCTION

Subject to approval by the Alameda County Superior Court (the “Court”), this Amended Settlement Agreement and Release and the attached Exhibits A through G (“Settlement Agreement,” “Settlement,” or “Agreement”) set forth the full and final terms by which Michael Cuenca (the “Named Plaintiff” or “Class Representatives”), on behalf of himself and members of the Settlement Class and Aggrieved Employees as defined herein, and Kaiser Foundation Health Plan, Inc. (“KFHP”), Kaiser Foundation Hospitals (“KFH”), The Permanente Medical Group, Inc. (“TPMG”), and Southern California Permanente Medical Group (“SCPMG”) (together, the

“Kaiser-Related Entities” or “Defendants”)¹ (collectively, the “Parties”), have settled and resolved all claims that have been raised in the Litigation. This Action and Settlement applies to a Settlement Class of Hispanic/Latinx Employees who were employed full-time by any of the Kaiser-Related Entities in a Class-Covered Job at any time between June 17, 2016 and March 31, 2021, as defined below.

II. RECITALS

WHEREAS, on June 17, 2020, Plaintiff filed a class and representative action Complaint (the “Action”) in Alameda County Superior Court against “Kaiser Permanente” alleging race and national origin-based pay and promotion discrimination class and failure to prevent race and national origin-based pay and promotion class discrimination claims under the California Fair Employment and Housing Act, Cal. Gov. Code § 12940 et seq. (“FEHA”); the California Equal Pay Act, as amended, Cal. Labor Code §§ 1197.5, 1194.5 (“California EPA”), the California Unfair Competition Law, Cal. Bus. & Prof. Code section 17200, et seq.; and a request for Declaratory Judgment under Cal. Civ. P. §1060, et seq.;

WHEREAS on August 14, 2020, Plaintiff filed the First Amended Complaint that added KFHP, KFH and TPMG as named defendants;

WHEREAS, Defendants deny and continue to deny all of the allegations made and have denied and continue to deny that they are liable or owe damages to anyone with respect to the alleged facts or causes of action asserted. Nonetheless, without admitting or conceding any liability or damages, the Parties have agreed to settle the lawsuit on the terms and conditions set forth herein to avoid the burden and expense of continuing litigation;

¹ As discussed herein, SCPMG is not a named defendant in the operative First Amended Complaint but will be added as a defendant for purposes of this Settlement pursuant to this Agreement.

WHEREAS, the Parties have engaged in a substantial exchange of documents, data, and analyses, have had joint meetings with experts, and have had a series of meetings to explore their respective factual positions and arguments;

WHEREAS, after Defendants demurred to the First Amended Complaint on October 1, 2020, the Parties have engaged in settlement negotiations between November 2020 and April 2021;

WHEREAS, the Parties and their counsel recognize that, in the absence of an approved settlement, they would face a long litigation course, including extensive, costly, and time-consuming discovery, a motion for class certification, motions for summary judgment, and trial and appellate proceedings that would consume time and resources and present each of them with ongoing litigation risks and uncertainties;

WHEREAS, the Parties wish to avoid these risks and uncertainties, as well as the consumption of time and resources, through settlement pursuant to the terms and conditions set forth herein;

WHEREAS, based upon their analysis and evaluation of a number of factors, and recognizing the substantial risks of continued litigation, including the possibility that the litigation, if not settled now, might result in no recovery or a recovery that is less favorable to the Plaintiffs, Counsel for Plaintiffs is satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate and that this Agreement is in the best interests of Plaintiffs and Class;

WHEREAS, the Named Plaintiff believes that the Settlement set forth herein serves the best interests of Class Members based on all the facts and circumstances, including the risk of

significant delay and the uncertainty of class certification, as it provides prompt relief for Class Members;

WHEREAS, it is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims arising from or related to the Action which exist between them and between the Named Plaintiff, the Class Members, and the Released Parties;

WHEREAS, it is the intention of the Parties that this Agreement shall constitute a full and complete settlement and release of all Released Claims against all Released Parties and a dismissal of all pending actions covered by the Released Claims;

WHEREAS, as soon as practicable after this Agreement is executed, the Parties will execute a stipulation to amend the current First Amended Complaint and providing that, on April 23, 2021, Named Plaintiff will file a Second Amended Complaint, substantially in the form attached as Exhibit G, which adds SCPMG as a named defendant and which adds to the Action race- and national origin-based pay and promotion discrimination claims under Title VII of the Civil Rights Act, 42 U.S.C. § 2000e et seq. (“Title VII”); 42 U.S.C. § 1981 (“Section 1981”) and the California Private Attorneys General Act of 2004, Cal. Lab. Code section 2698, et seq. (“PAGA”). Named Plaintiff will file this stipulation attaching the Second Amended Complaint at the time of the filing of the preliminary approval motion seeking approval of this Settlement Agreement;

WHEREAS, following the filing of the Second Amended Complaint, Defendants shall not seek to remove the Action;

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, as well as the good and valuable consideration provided for herein, the Parties agree to a

full and complete settlement of all Released Claims against all Released Parties and a dismissal of all pending actions covered by the Released Claims on the following terms and conditions:

III. GENERAL TERMS OF THE SETTLEMENT AGREEMENT

A. Definitions.

In addition to terms identified and defined elsewhere in this Settlement Agreement, and as used in this Settlement Agreement, the terms below shall have the following meanings wherever used in this Agreement and in all of its Exhibits:

1. “Action” or “Litigation” means the Second Amended Complaint to be filed in *Cuenca v. Kaiser Permanente*, case number RG20065123, in the Alameda County Superior Court as discussed in Section II above, and the allegations and claims contained therein.

2. “Best Efforts” means making reasonable and good-faith efforts to implement a plan and take steps reasonably designed to comply with the specified objectives to which the best efforts are directed.

3. “Class” means the class of Hispanic or Latinx individuals as alleged in the Second Amended Complaint.

4. “Class Counsel Attorneys’ Fees” and “Class Counsel Litigation Expenses” mean the amounts approved by the Court for payment to Class Counsel to compensate them for, respectively, their attorneys’ fees and litigation expenses incurred in connection with the Action, including their pre-filing investigation, their filing of the Action and all related litigation activities, the negotiation, execution, and administration of this Settlement, and all post-Settlement compliance (including pursuant to Section XV.N) and approval procedures, as described herein.

5. “Class Counsel” means the law firms of Bryan Schwartz Law and Nichols Kaster, PLLP.
6. “Class Member” is a member of the Class.
7. “Class Period” means the time period between June 17, 2016 and March 31, 2021.
8. “Complaint” means the Second Amended Complaint attached as Exhibit G that is to be filed in this Action.
9. “Court” means the Alameda County Superior Court.
10. “Class-Covered Job(s)” means the full-time occupied, exempt or non-exempt, non-union, non-clinical, Director-level or below jobs set forth in Appendix 1, which include designated jobs in the Named Plaintiff’s job family and in two other job families (Administrative Support and Consulting Services).
11. “Defendants” or “Kaiser-Related Entities” mean Kaiser Foundation Health Plan, Inc., Kaiser Foundation Hospitals, The Permanente Medical Group, Inc., and Southern California Permanente Medical Group.
12. “Defendants’ Counsel” means Defendants’ counsel of record in the Action (presently the law firm of GBG LLP).
13. “Depository Bank” means Citibank, N.A. or another bank jointly selected by Class Counsel and Defendants’ Counsel to receive, hold, invest, and disburse the Settlement Fund, subject to the direction of the Settlement Administrator.
14. “Effective Date” means the date on which all of the following have occurred: (1) the Court has granted Final Approval of this Settlement Agreement and has signed and entered an order so indicating; (2) the Court has entered an Order and Judgment dismissing

the Action with prejudice, with continuing jurisdiction limited to enforcing this Settlement Agreement; and (3) if there were any objections made in accordance with section V.C.1, below, the deadline for taking an appeal has either run without an appeal being filed, or, if there is an appeal of the Court's Order granting Final Approval, the day after all appeals are fully and finally resolved in favor of Final Approval of the Agreement. It is the intention of the Parties that the Settlement shall not become effective until the Court's Final Order approving the Settlement has become completely final, and no timely recourse remains for an appellant or objector to contest the Settlement.

15. "Enhancement Claim Form" means the form for promotion claims enhancements agreed to by the Parties and attached to the Notice, substantially in the form attached hereto as Exhibit C. All Settlement Class Members shall have Individual Settlement Payments allocated pursuant to Section X.C without submitting an Enhancement Claim Form. However, the Enhancement Claim Form may be submitted to the Settlement Administrator by those Settlement Class Members who seek enhancement for an alleged denial of promotion which would entitle them to receive an additional allocation from the Settlement Fund.

16. "Final Approval" means the date on which the Court issues the final order granting final approval of the Settlement after the Fairness Hearing.

17. "Independent Consultants" means the jointly selected firms or individuals appointed by the Parties to carry out the duties specified in Exhibit B to this Agreement.

18. "LWDA Payment" means the payment of the State of California's share of alleged civil penalties in connection with any Class Member claims arising under PAGA, subject to Court approval.

19. "Named Plaintiff" or "Class Representative" means Michael Cuenca.

20. “Notice” means the Notice of Settlement of Class Action, which includes the information about the proposed Settlement, and Settlement Hearing, which is to be mailed directly to Class Members, substantially in the form attached hereto as Exhibit A.

21. “Notice of Award” means the letter sent to each Settlement Class Member by the Settlement Administrator specifying the amount of that Settlement Class Member’s Individual Settlement Award, as determined by the Settlement Administrator pursuant to Section X, and enclosing the Individual Settlement Awards.

22. “Preliminary Approval” means the Order of the Court preliminarily certifying the Settlement Class and preliminarily approving the terms and conditions of this Settlement Agreement, and the form, manner, and timing of providing Notice to Class Members, and the time period for, and the manner of, opt-outs and objections.

23. “Service Award” means the additional amount paid to Named Plaintiff listed in Section X.A, subject to Court approval, for his service in this Litigation.

24. “Settlement,” “Agreement,” and “Settlement Agreement” each mean the settlement agreed to by the Parties as reflected in this Settlement Agreement and all exhibits attached to it.

25. “Settlement Administrator” means an administrator who has been jointly designated by counsel for the Parties, and approved by the Court, to administer the Settlement Fund pursuant to the terms of this Agreement and orders of the Court. JND Legal Administration has been selected as the Settlement Administrator. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

26. “Settlement Award Fund” means the Settlement Fund, including the Settlement Sum of \$7,372,586 to be paid by Defendants pursuant to this Settlement and any interest accrued on that amount, less (i) the Service Award, as described herein and approved by the Court; (ii) the Class Counsel Attorneys’ Fees and Class Counsel Litigation Expenses payments, as described herein and approved by the Court; (iii) the payment to the LWDA, as described herein and approved by the Court; (iv) the Settlement Administrator’s reasonable fees and expenses, as described herein and approved by the Court; and (v) any reserved contingency fund or other fees or expenses (other than attorneys’ fees and expenses) incurred in implementing the terms and conditions of this Agreement and securing dismissal of the Action as awarded by the Court. If this Settlement is fully and finally approved by the Court, then after the Effective Date, in no event shall any portion of the Settlement Award Fund revert to Defendants.

27. “Settlement Class” means Hispanic/Latinx employees employed full-time by any of the Kaiser-Related Entities in California in a Class-Covered Job in any of the following Regions at any time between June 17, 2016 and March 31, 2021: Northern California (NCAL); Southern California (SCAL); California locations of the Program Offices Region; and California locations of the KP-IT Region.

28. “Settlement Class Member” means a Class Member who does not opt out of the Settlement.

29. “Settlement Fund” or “Fund” means the settlement monies transferred by Defendants to the Depository Bank, pursuant to Section X.A of this Settlement Agreement, including all interest earned thereon, to be held, invested, administered, and disbursed pursuant to this Settlement Agreement, for allocation among Settlement Class Members by the Settlement Administrator, and includes all settlement payments to the Settlement Class Members (including

Named Plaintiff) for Released Claims, Service Award, the LWDA Payment, the costs of administration, any reserved contingency fund or other fees or expenses (other than attorneys' fees and expenses) incurred in implementing the terms and conditions of this Agreement and securing dismissal of the Action as awarded by the Court, and the fees and costs of Class Counsel, all as described more fully herein. Except as set forth in Section X.G related to the employers' share of statutory and other payroll taxes, Defendants shall not be responsible for any additional payment not expressly set forth in this Agreement.

30. "Settlement Hearing" or "Fairness Hearing" means the hearing at which the Court grants final approval of this Settlement Agreement and makes other rulings as are contemplated by this Agreement or as modified by any subsequent mutual agreement of the Parties in writing and approved by the Court.

IV. GENERAL TERMS

A. Duration of the Changes in Business Practices.

The "Changes in Business Practices" described in Exhibit B to this Settlement Agreement shall remain binding on the Parties and their agents and successors for a period of three (3) years following the Effective Date, unless a different timeframe is provided for a particular component of the Changes in Business Practices described in Exhibit B.

B. Cooperation.

The Parties agree that they will cooperate to effectuate and implement all terms and conditions of this Settlement Agreement, and exercise good faith efforts to accomplish the terms and conditions of this Settlement Agreement. Each of the Parties, upon the request of any other, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement. The Parties agree that they will make all reasonably practicable efforts to advance the Court's consideration of the request

for Preliminary Approval and approval of the Class Notice, and to seek the Court's Final Approval and the final and complete resolution of this matter, as expeditiously as due process supports. To that end, the Parties will comply with the terms of the Stipulation and Proposed Protective Order—Confidential and Attorneys Eyes Only Designations executed by the Parties on January 25, 2021 ("Stipulated Protective Order"), while the Stipulated Protective Order is pending before the Court and will not delay proceedings for settlement approval based on entry of the Stipulated Protective Order. (The entry of the Stipulated Protective Order is not a material term to the Settlement.) The Parties agree to accept non-material and procedural changes to this Settlement Agreement if so required by the Court in connection with Final Approval of the Settlement, but under no circumstances are Defendants obligated to accept any changes in the amount of the Settlement Sum, the scope of the releases, or any other substantive change to the Settlement including but not limited to the Changes in Business Practices provided for herein.

C. Persons Covered by this Settlement Agreement.

1. Definition of "Settlement Class," "Class," or "Class Members."

Solely for purposes of settlement and judicial approval of this Settlement Agreement, the Parties stipulate to the certification of the Settlement Class defined in Section III.A above.

2. Certification.

Named Plaintiff will propose to the Court that the Settlement Class will be certified pursuant to California Code of Civil Procedure Section 382 for settlement purposes only. Defendants do not waive, and instead expressly reserve, their right to challenge the propriety of class certification for any purpose as if this Settlement Agreement had not been entered into by the Parties should the Court not approve the Settlement Agreement or the Settlement Agreement does not become effective, or should Defendants exercise their right to revoke the Settlement Agreement, as described in Section XII.

V. COURT APPROVAL/NOTICE AND FAIRNESS HEARING

A. Jurisdiction and Venue.

The Parties agree that the Court has jurisdiction over the Parties and the subject matter of this Action and that venue is proper. The Court shall retain jurisdiction of this Action for four (4) years from the Effective Date of the Settlement Agreement solely for the purpose of entering all orders and judgments authorized hereunder (including any requests for relief pursuant to Section V.C below) that may be necessary to implement and enforce this Settlement Agreement and the relief provided herein.

B. Notice Procedures.

1. Prior to execution of this Settlement Agreement, the Parties agreed upon a form for written Notice of this Settlement Agreement to Class Members, attached as Exhibit A, subject to Court approval.

2. Defendants shall diligently and in good faith compile from their records and provide to the Settlement Administrator, within five (5) days after Preliminary Approval of this Settlement Agreement, a list of all Class Members, including the full name, social security number, last known home address, personal email address and telephone number(s) (if known), weeks worked in a Class-Covered Job during the Class Period, exempt or non-exempt status for each week worked in a Class-Covered Job during the Class Period, and base annual salary rates for each week worked in a Class-Covered Job during the Class Period (the “Class List”). This information will be provided in a computer-readable format acceptable to the Settlement Administrator. The Settlement Administrator shall utilize Class Members’ social security numbers only for the purpose of locating and identifying Class Members and shall keep those social security numbers confidential. The Settlement Administrator shall maintain the Class List(s) in the strictest confidence and shall not disclose it to anyone, except to Class Counsel

(with Class Members' social security numbers redacted/removed) to enable them to encourage Class Members to participate in the Settlement. Class Counsel shall not use the Class List(s) or any information therein for any purpose other than to prosecute this Settlement.

3. Within fifteen (15) days after Defendants provide the Class List to the Settlement Administrator, the Settlement Administrator will mail and email the Notice, substantially in the form evidenced by Exhibit A attached hereto, to each Class Member's last known residential address and personal email address (if known or reasonably available). The Parties intend to provide actual notice of the Settlement to each Class Member, to the extent practicable. The Settlement Administrator shall mail and email an Enhancement Claim Form to each Class Member, substantially in the form evidenced by Exhibit C attached hereto, to each Class Member's last known residential address and personal email address (if known) at the same time the Notice is sent.

4. The Notice shall be tailored for each Class Member and have pre-printed information regarding that Class Member's name, personal contact information, and information pertinent to the estimated allocation for the Named Plaintiff and/or Class Member. The Notice and Enhancement Claim Form shall be enclosed in an envelope substantially in the form evidenced by Exhibit D, attached hereto.

5. The Settlement Administrator will mail the Notice to each Class Member by first-class U.S. mail and email (if known) to each Class Member's last known residential address and personal email address (if known). In order to provide the best notice practicable, the Settlement Administrator shall run the list of Class Members through the United States Postal Service's National Change of Address database before mailing the Notice.

6. If Notices are returned with forwarding addresses, the Settlement Administrator shall re-mail the Notice to the new address within three (3) business days. In the event that Notices are returned to the Settlement Administrator by the United States Postal Service because the address of the recipient is no longer valid, *i.e.*, the envelope is marked “Return to Sender,” the Settlement Administrator shall perform a standard skip trace in an effort to attempt to ascertain the current address of the particular individual in question and, if such an address is ascertained, the Settlement Administrator shall re-send the Notice within three (3) business days of receiving the newly-ascertained address. With respect to envelopes marked “Return to Sender,” the Settlement Administrator may also call any identified last-known telephone numbers (and telephone numbers updated through public and proprietary databases) of Class Members to obtain current addresses, and may request from Defendant’s Counsel updated contact information for those currently employed by Defendant.

7. During the forty-five (45) day Objection Period and Opt-Out Period (“Notice Period”), the Settlement Administrator shall provide the Parties with weekly summaries as to the status of Notice mailings, including the number of Notices which were re-mailed, the number of successful and unsuccessful mailings, whether any Class Member has submitted a challenge to any information contained in their Notice, and the number of Class Members who have opted out and/or objected as described in Section V.C.

8. The Settlement Administrator shall provide to Defendant’s Counsel and Class Counsel, at least ten (10) business days prior to the close of the 45-day Notice Period, a list of Class Members to whom Notices were returned as undeliverable and for whom efforts to obtain an alternative address failed.

9. Class Counsel shall provide the Court, at least five (5) days prior to the Final Approval Hearing, a declaration by the Settlement Administrator of due diligence and proof of mailing with regard to the mailing of the Notice.

10. The expenses of the Settlement Administrator shall be taken from and paid by the Settlement Fund described at Section X.A below.

C. Objections and Opt-Outs.

1. Any Class Member who wishes to present objections to the Settlement at the Fairness Hearing must first do so in a written statement (“Notice of Objection”). To be valid, the Notice of Objection must contain the full name, address, and telephone number of the Class Member, and must be physically signed by the Class Member. The Notice of Objection must contain a written statement of all grounds for the objection, and all facts or law supporting the objection, if any. To be considered, the Notice of Objection must be mailed or emailed to the Settlement Administrator no later than forty-five (45) days after the postmark of the date the Notice was first mailed (the “Objection Period”). The postmark or email date of the Notice of Objection shall be the exclusive means for determining that a Notice of Objection is timely. The Named Plaintiff agrees not to object to the Settlement. Class Members who fail to make objections in the manner specified herein shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Agreement. Any Class Member may withdraw their objections at any time.

2. The Settlement Administrator shall stamp on the original objection the date it was received, and shall send copies of each objection to Class Counsel and Defendants’ Counsel by email not later than two (2) business days after receipt thereof. Class Counsel shall file the objections with the Clerk of Court within five (5) days after the end of the Notice Period.

3. Even if a Class Member does not timely submit a written objection to the Settlement, the Class Member and/or their representative may still appear at the Final Approval Hearing to present to the Court oral objections or concerns that the Class Member may have with the Settlement so long as they provide written notice, which may be by email, to Class Counsel and the Court by no later than 10:00 a.m. two days prior to the date of the Final Approval Hearing of their intent to appear at the Final Approval Hearing. Per the Court's tentative ruling issued on May 13, 2021, the Parties understand that if the Final Approval Hearing will be conducted remotely as a result of the Covid-19 pandemic, the Court will send the Class Member a responsive email with instructions regarding how to participate remotely.

4. Any Class Member who has requested exclusion from the Settlement by submitting a valid Opt-Out Statement may not submit objections to the Settlement and shall not receive any Individual Settlement Payment. If a Class Member submits both an Opt-Out Statement and a Notice of Objection, then the Opt-Out Statement will be valid and will invalidate the Notice of Objection.

5. The Named Plaintiff and/or Defendants may file with the Court written responses to any objections at least seven (7) days before the Fairness Hearing.

6. Class Members may request exclusion from the monetary relief provisions of the Settlement by "opting out" no later than forty-five (45) days after Notice is first mailed (the "Opt-Out Period"). Any Class Member who wishes to exclude themselves from the Settlement must mail or email to the Settlement Administrator a written, signed statement that they are opting out ("Opt-Out Statement"). The Opt-Out Statement must contain the full name, address, and telephone number of the Class Member who seeks to opt out to be valid. It must also contain a written statement requesting to be excluded from this Settlement and that the Class

Member does not wish to participate in the Settlement. To be effective, such an Opt-Out Statement must be sent via mail or email and postmarked by a date certain to be specified on the Notice that is no later than forty-five (45) days after the Notice is first mailed. The postmark of the mailing envelope or email date shall be the exclusive means used to determine whether a request for exclusion (opt-out) has been timely submitted. The Opt-Out Statement must be personally signed by the Class Member who seeks to opt out and sent in the mail or scanned and attached to an email by the Class Member who seeks to opt out. No opt-out request may be made on behalf of a group of Class Members. Named Plaintiff agrees not to request to opt out and be excluded from the Settlement. A Class Member who does not submit a timely and valid Opt-Out Statement will be deemed a Settlement Class Member and will be bound by all terms of the Settlement Agreement if the Settlement is granted Final Approval by the Court.

7. The Settlement Administrator shall stamp on the original of any Opt-Out Statement that it receives the date it was received, and shall serve copies of each Opt-Out Statement on Class Counsel and Defendants' Counsel by email no later than two (2) business days after receipt thereof. The Settlement Administrator shall, within five (5) days after the end of the Opt-Out Period, send a final list of all Opt-Out Statements to Class Counsel and Defendants' Counsel by email. The Settlement Administrator shall retain the stamped originals of all Opt-Out Statements and originals of all envelopes accompanying Opt-Out Statements in its files until such time as the Settlement Administrator is relieved of its duties and responsibilities under this Agreement.

8. The Settlement Administrator shall file with the Court, at least five (5) days prior to the Final Approval Hearing, all Opt-Out Statements that are timely received. With respect to each Opt-Out, the statute of limitations for such individual to assert any claim for

individual relief will resume running on the email or postmark date of the Opt-Out Statement. The share of any such Opt-Out, as calculated pursuant to Section X.D, shall remain in the Settlement Award Fund for distribution to those who did not timely opt out of the Settlement.

9. **Waiver of Right to Appeal.** Provided that the judgment against Defendants is consistent with the terms and conditions of this Agreement, then Named Plaintiff and Class Members who did not timely and validly submit an objection to the Settlement and their counsel, as well as Defendants and their counsel, hereby waive any and all rights to appeal from the judgment against Defendants, including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment or a motion for new trial, and any extraordinary writ, and the judgment therefore shall become final and non-appealable at the time it is entered. The waiver does not include any waiver of the right to oppose any appeal, appellate proceedings, or post-judgment proceedings.

10. **No Solicitation of Objection or Request to Opt Out.** The Parties agree that the decision to opt out should be left to the individual Class Members. If contacted by a Class Member, Class Counsel may provide any advice or assistance to any Class Member who requests them to do so. If Defendants' Counsel is contacted by Class Members regarding the Settlement, counsel shall refer the call or communication to the Settlement Administrator or Class Counsel. In addition, at no time shall the Named Plaintiff, Defendants, or their respective counsel seek to solicit or otherwise encourage Class Members or any other persons to submit written objections to the settlement or to encourage Settlement Class Members to appeal the Court's final approval order and entry of judgment, or to submit opt-out forms. Class Counsel agrees not to represent any Class Members with respect to any such objections to this Settlement.

11. If Defendants exercise their option to revoke the Settlement pursuant to Section XII, this Settlement Agreement and all actions taken in its furtherance shall be null and void, in which case the Court shall not issue Final Approval and neither Defendants nor any of the Named Plaintiff shall be deemed to have waived any claims, objections, defenses, or affirmative defenses with respect to this Action.

D. Notice and Approval of LWDA Payment.

1. The Parties agree that Class Counsel will submit a Notice to the LWDA of this Settlement along with a copy of this Settlement Agreement within ten (10) calendar days of its execution by all Parties and Class Counsel. Class Counsel will thereafter submit to the LWDA a copy of any judgment or any other order (*e.g.*, the Final Approval) providing for an award of civil penalties in conformity with Labor Code Section 2699(1)(3).

2. The Parties agree that up to \$73,726 (the “PAGA Allocation”) of the Settlement Fund shall be allocated to the resolution of any Settlement Class Member claims arising under the PAGA, 75% of which is to be paid to the State of California. The Parties will apply to the Court for a payment out of the Settlement Fund to the LWDA of 75% of the PAGA Allocation as the LWDA’s share of the settlement of civil penalties paid under this Agreement to the State of California for its PAGA claim. If the Court approves a PAGA Allocation of less than \$73,726, the remainder will be retained in the Settlement Award Fund for distribution to Settlement Class Members. Any change in the requested PAGA Allocation is not a material term of this Agreement. If the Court approves a lesser or greater amount than that requested, the other terms of this Agreement shall still remain in effect. However, some approval of a PAGA Allocation is a material term of the Settlement and this Agreement. If the Court does not approve any LWDA Payment, then the entire Agreement will be, at Defendants’ sole discretion, void and unenforceable. In such a case, the Parties shall be returned to their respective statuses as of the

date and time immediately prior to the execution of this Settlement Agreement, and the Parties shall proceed in all respects as if this Settlement Agreement had not been executed, except that the costs of administration shall be borne by Defendants.

E. Preliminary Approval and Final Approval.

1. On April 23, 2021, the Named Plaintiff shall submit to the Court a Motion for Preliminary Approval of the Settlement (“Preliminary Approval Motion”). The Preliminary Approval Motion shall seek the setting of dates for opt-outs, objections, and a Fairness Hearing and shall present this Agreement and all Exhibits thereto, including the [Proposed] Order Granting Preliminary Approval attached hereto as Exhibit E.

2. The Parties, through their respective counsel, agree to use their best efforts on a joint basis to obtain prompt entry of the Preliminary Approval Order. The Parties, through their respective counsel, also agree to recommend to the Court on a joint basis that, in their respective professional opinions, the Settlement Agreement is reasonable and appropriate, in the best interests of justice, that the Parties have bargained for the terms in the Settlement Agreement, and that no section or subsection of this Settlement Agreement should be modified or stricken.

3. If Preliminary Approval is granted, a briefing schedule and Final Approval Hearing date will be set, and the Parties will propose that the Court hold the Final Approval Hearing approximately 90 days after Preliminary Approval is granted.

4. The Named Plaintiff shall file a Motion for Final Approval and for Certification of the Settlement Class. The Motion will be due fifteen (15) days before the close of the Objection Period and Opt-Out Period, and the Named Plaintiff may file reply briefing in support of Final Approval one week after the close of the Objection Period and Opt-Out Period. The actual dates will be inserted in the Preliminary Approval Order by the Court. The Motion

shall, among other things, seek: (a) Final Approval of settlement of the Class Members' claims as fair, reasonable, adequate, and binding on all Class Members who have not opted out and directing consummation of the terms and provisions the Settlement; (b) final certification of the Settlement Class for purposes of settlement hereunder only; (c) entry of judgment in accordance with this Agreement dismissing the Action on the merits and with prejudice and permanently barring all members of the Settlement Class who have not timely opted out, including the Class Representatives, from commencing, maintaining, prosecuting, participating in any action, suit, or proceeding (judicial, administrative, arbitral, or other) that asserts the Released Claims against Defendants or any of the Released Parties; (d) providing that the promises, agreement, obligations, undertakings, representations, certifications, and warranties set out herein shall survive the closing of this Settlement Agreement, approving the Release/Bar of Claims order contained in Section VI herein, issuing the judgment of dismissal to be entered in the Action, and providing that the Court shall have continuing jurisdiction to enforce the Settlement Agreement for the period specified herein.

5. Class Counsel will be responsible for drafting all documents necessary to obtain Preliminary Approval and Final Approval. Consistent with the Parties' mutual agreement to support the Settlement and not to characterize the Settlement as a win on the merits (or a loss on the merits) by any Party, but rather as a favorable settlement from both Parties' perspectives that is fair to the proposed Settlement Class, Class Counsel will share drafts of the Preliminary Approval Motion, Final Approval Motion, and all supporting declarations with Defendants prior to filing them to ensure that such proposed filings are consistent with this paragraph. At the hearing before the Court to request Final Approval, the Parties will jointly submit a proposed Final Approval Order and Judgment.

6. Other than to effectuate this Settlement Agreement, Defendants do not agree to the certification of the Settlement Class, the provisional designation of the law firms Bryan Schwartz Law and Nichols Kaster PLLP as Class Counsel for the Settlement Class, or provisional designation of the Named Plaintiff as representative of the Settlement Class for any purpose.

7. In the event that this Settlement Agreement does not become final and binding or the Effective Date does not occur, no Party shall be deemed to have waived any claims, objections, rights, or defenses, or legal arguments or positions, including, but not limited to, claims or objections to class certification, or claims or defenses on the merits. Neither this Settlement Agreement nor the Court's Preliminary Approval Order or Final Approval Order shall be admissible in any court regarding the propriety of class or collective action certification or regarding any other issue or subject (except for the purpose of enforcing this Settlement Agreement). Each Party reserves the right to prosecute or defend this Action in the event that the Settlement Agreement does not become final and binding.

8. Except as otherwise stated herein, each substantive term of this Agreement is material and has been relied upon by the Parties in entering into this Agreement. If Defendants exercise their option to revoke the Settlement pursuant to Section XII, if the Effective Date does not occur, or if this Settlement Agreement is not approved by the Court or for any other reason does not become final (e.g., an objection by the LWDA), is terminated or fails to become effective in accordance with its material terms (or, if following approval or Judgment by this Court, such approval or Judgment is reversed or substantively modified), the Parties shall be restored to their respective positions that existed in this Action prior to entering into this Settlement; the terms and provisions of this Settlement Agreement (including Exhibit B,

describing Changes in Business Practices) shall have no force or effect; statements, discussions, or materials prepared, exchanged, issued, or used during the negotiation of this Settlement Agreement shall not be used in this Action or in any proceeding for any purpose; to the extent paid, the Settlement Sum shall be returned to Defendants, including the interest earned by the Settlement Fund through the date of termination (after deducting costs of providing Notice to Class Members and costs incurred by the Settlement Administrator as of the date of termination); any Judgment entered by the Court in accordance with the terms of this Settlement Agreement shall be treated as vacated, *nunc pro tunc*; and the litigation of the Action will resume as if there had been no Settlement Agreement, with no stipulated Class. In this event, the Parties will retain all rights, claims, objections, affirmative defenses, and defenses as to class certification and otherwise as to any of the allegations and claims asserted in and defenses to this Action. This Settlement Agreement will not be considered an admission of liability by Defendants nor, in the event it is not finally approved, represent a cap on damages available to the Named Plaintiff or any member of the Settlement Class.

9. To the extent this Agreement is deemed void or the Effective Date does not occur, Defendants do not waive, but rather expressly reserve, all rights to challenge any and all claims and allegations asserted by the Named Plaintiff in the Action upon all procedural and substantive grounds, including without limitation the ability to challenge class or collective action treatment on any grounds and to assert any and all other potential defenses or privileges. The Named Plaintiff and Class Counsel agree that Defendants retain and reserve these rights, and they agree not to take a position to the contrary. Specifically, the Named Plaintiff and Class Counsel agree that, if the Action were to proceed, they shall not argue or present any argument, and hereby waive any argument that, based on this Settlement or this Agreement or any Exhibit

and attachment hereto, or any act performed or document executed pursuant to or in furtherance of this Settlement or this Agreement, Defendants should be barred from contesting class or collective action certification pursuant to federal or state law on any grounds, or asserting any and all other potential defenses and privileges. This Agreement shall not be deemed an admission by, or a basis for estoppel against, Defendants that class action treatment or conditional certification pursuant to any federal or state law is proper or cannot be contested on any grounds. Additionally, neither the Agreement nor the Settlement, nor any act performed or document executed pursuant to, or in furtherance of, the Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission or evidence of the validity of any Released Claim, or of any wrongdoing or liability of the Released Parties, or any of them; or (b) is or may be deemed to be or may be used as an admission or evidence of any fault or omission of the Released Parties, or any of them, in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal.

F. Settlement Administrator Duties.

1. The Settlement Administrator shall (1) mail and email the Notice and Enhancement Claim Form after performing any address checks required by Section V.B.5; (2) respond to questions from Class Members; (3) distribute Individual Settlement Awards to Settlement Class Members as described in Section X; (4) maintain a toll-free number for communicating with Class Members; (5) no later than twenty (20) days after the Effective Date, distribute Service Award to Named Plaintiff; (6) no later than twenty (20) days after the Effective Date, distribute amounts approved by the Court as Attorneys' Fees and Expenses to Class Counsel; (7) no later than twenty (20) days after the Effective Date, forward payment to the LWDA as described in Section V.D.2; (8) determine the employer's share of taxes owed and remit them to the taxing authorities, file required state and federal tax returns, and take all other

actions required by Sections X.A, G; (9) distribute funds to the *cy pres* recipient as described in Section X.E; and (10) perform any other duties necessary to carry out its responsibilities described in this Agreement.

2. The Parties agree to cooperate with the Settlement Administrator and assist it in any way possible in administering the terms of this Agreement. The Parties agree to cooperate in the settlement administration process and work with the Settlement Administrator in making all reasonable efforts to control and minimize the costs and expenses incurred in the administration of the Settlement.

3. At least five (5) business days prior to the Final Approval Hearing, the Settlement Administrator shall provide Class Counsel and Defendants' Counsel with a statement detailing its costs of administration, which Class Counsel shall file with the Court.

VI. RELEASE/BAR OF CLAIMS

A. Settlement Class Member and PAGA Action Release.

Upon the Effective Date, and except as to such rights or claims as may be created by this Agreement, each Class Member (including Named Plaintiff) 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 (per the Second Amended Complaint), 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 or national origin discrimination in pay or promotion, failure to prevent race or national origin-based pay and promotion class discrimination, or any alleged denial of equal pay based on race or national origin. The rights and claims released (collectively, the "Released Claims") include: (i) claims for unequal pay based on race or national origin, (ii) claims for disparate treatment and pattern and practice discrimination based on race or national origin 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 or national origin 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 and 1194.5, California's Business & Professions Code §17200, et seq., and the California Private Attorneys General Act of 2004, Cal. Lab. Code §§2698-2699. For the sake of clarity, Released Claims shall not include any individual, non-class claims Class Member Releasers may have for alleged race- or national origin-based harassment, alleged retaliation, and/or alleged termination.

Except for a proceeding brought to enforce the terms of the Settlement Agreement, Settlement Class Members shall, as of the Effective Date, be barred from commencing, maintaining, prosecuting, participating in, or permitting to be filed by any other person on their behalf, any action, suit, or proceeding against Defendants and the Released Parties with respect to the Released Claims and will be deemed to have agreed to the same by participating in this Settlement.

Upon the Effective Date, this Action will be deemed voluntarily dismissed with prejudice, except that the Court will retain jurisdiction solely for the purposes set forth in Section XV.N.3 of this Settlement Agreement.

B. Individual Claims of Named Plaintiff.

The Named Plaintiff will separately resolve his individual, non-class claims and, in doing so, for separate consideration, provide a broader general release of claims for matters that are outside the scope of this Settlement, after separate mediation with a separate mediator, retired judge Hon. Ellen S. James (Judge James). Such mediation is scheduled to occur after this Settlement Agreement is signed.

The Named Plaintiff also waives as to the Released Claims all rights and benefits afforded by Section 1542 of the Civil Code of the State of California, and does so understanding the significance of that waiver. Section 1542 provides:

A general release does not extend to claims which the creditor or releasing party does not

know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her must have materially affected his or her settlement with the debtor or released party.

C. Materiality of the Release.

The terms of the releases are a material part of this Settlement Agreement. If these releases or the Settlement Agreement cannot become effective for any reason then the Settlement set forth in this Settlement Agreement shall terminate as provided in Section VE of this Settlement Agreement, then the release shall terminate *nunc pro tunc* and be of no force and effect.

D. No Bar to Future Claims.

Nothing in the Settlement Agreement shall be construed to bar any claims of members of the Settlement Class that arise from conduct occurring after March 31, 2021. Nothing in the Settlement Agreement shall be construed to bar any claims of the Named Plaintiff that arise from conduct occurring after the date that Named Plaintiff's individual general release, as applicable, becomes effective.

E. Ownership of Claims.

Class Members may not assign or transfer their rights to participate in this Settlement Agreement. The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged. Named Plaintiff and Class Counsel further represent and warrant that there are not any liens or claims against any amount that Defendants are to pay to the Named Plaintiff or Class Counsel under this Agreement. Named Plaintiff and Class Counsel agree to defend, to indemnify, and to hold Defendants harmless from any liability,

losses, claims, damages, costs, or expenses, including reasonable attorneys' fees, resulting from a breach of these representations or from any lien or assignment by the Named Plaintiff or Class Counsel.

VII. MUTUAL SUPPORT OF SETTLEMENT

The Parties will agree to support the Settlement, including in their public statements, and will not characterize the Settlement as a win on the merits (or a loss on the merits) by any Party, but rather as a favorable settlement from both Parties' perspectives that is fair to the proposed Settlement Class. To that end, and consistent with this Agreement, the Named Plaintiff will file the Second Amended Complaint, together with the motion for Preliminary Approval and supporting documents (including this Settlement Agreement and the Exhibits referenced herein), on April 23, 2021. Named Plaintiff and Class Counsel will not cause any public statements about this Settlement to be made before that date. Prior to issuing any press release, the Parties will share drafts to ensure that they are consistent with this paragraph. Named Plaintiff will issue any such press release to the media regarding this Settlement on April 23, 2021. In addition, within five (5) days after the date this Agreement is fully executed, Named Plaintiff and Class Counsel will inform the Office of Federal Contract Compliance Programs that Named Plaintiff has agreed to settle his class action lawsuit and that Named Plaintiff and Class Counsel are fully satisfied with the resolution of this matter.

VIII. NO ADMISSION, NO DETERMINATION

This Settlement Agreement does not, and is not intended to constitute, nor shall it be deemed to constitute, an admission by any Party as to the merits, validity, or accuracy of any of the allegations, claims, defenses, or affirmative defenses of any Party in this Action. The Named Plaintiff, on behalf of himself and the Class he seeks to represent, continues to assert the merits and validity of his claims under laws prohibiting race or national origin discrimination. By

entering into this Agreement, Defendants do not admit or concede, expressly or impliedly, but rather deny all claims as to liability, wrongdoing, damages, penalties, interest, fees, injunctive relief, and all other forms of relief, as well as the class allegations asserted in the Action, and deny that they have in any way violated laws prohibiting race and national origin discrimination. Neither the Court nor any other court has made any findings or expressed any opinion concerning the merits, validity, or accuracy of any of the allegations, claims, defenses, or affirmative defenses in this case. Nothing in this Settlement Agreement, nor any action taken in implementation thereof, nor any statements, discussions, or communications, nor any materials prepared, exchanged, issued, or used during the course of the negotiations leading to this Settlement Agreement, is intended by the Parties to, nor shall any of the foregoing constitute, be introduced, be used, or be admissible in any way in this case or any other judicial, arbitral, administrative, investigative, or other proceeding of whatsoever kind or nature (including, without limitation, the results of the claims process established under this Settlement Agreement) as evidence of race or national origin discrimination, retaliation, or race- or national origin-based harassment or as evidence of any violation of federal, state, or local laws prohibiting race or national origin discrimination, the common law of any jurisdiction, or any other federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity.

Notwithstanding the foregoing, this Settlement Agreement may be used in any proceeding in the Court or in mediation or arbitration to enforce or implement any provision of this Settlement Agreement or implement any orders or judgments of the Court entered into in connection herewith.

IX. CHANGES IN BUSINESS PRACTICES

The changes in business practices embodied in this Settlement Agreement and the agreements incorporated herein shall remain binding on the Parties and their agents and successors for a three-year period following the Effective Date, unless a different timeframe is provided for a particular component of the changes in business practices described in the complete recitation attached hereto as Exhibit B.

Defendants' Counsel and Class Counsel will meet at least once every six (6) months, beginning six months after the Effective Date, regarding compliance, and may confer more frequently at their discretion or as dictated by information either Party gathers. The Parties have agreed that Derek Sumimoto, Director of HR Compliance/Risk Management, shall serve as the Compliance Monitor for the duration of the Compliance Period, as described in Exhibit B. In the event that Mr. Sumimoto becomes unable to perform this responsibility, counsel for the Parties shall meet and confer to identify an appropriate alternative.

X. MONETARY RELIEF

A. Settlement Fund.

No later than ten (10) days after the Effective Date, Defendants shall pay, by wire transfer to the Depository Bank, the sum of \$7,372,586 (the "Settlement Sum"). The Settlement Sum will be placed in an interest-bearing account in the name of "Kaiser /Cuenca Settlement Fund." This will be a "Qualified Settlement Fund" as described in Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. Section 1.468B-1, et seq. This payment is made in order to satisfy the Settlement Class Claims of the Named Plaintiff and Settlement Class Members, as well as for other purposes identified in this paragraph. Defendants have no obligation to deposit such funds prior to the deadline set forth herein.

The Settlement Sum, together with interest subsequently earned thereon, shall constitute the “Settlement Fund.”

The Settlement Fund shall be controlled by the Settlement Administrator subject to the terms of this Agreement and any orders of the Court. The Settlement Fund shall be created, managed, and disbursed by the Settlement Administrator under the supervision of Class Counsel and Defendants’ Counsel. The Settlement Administrator shall be the only entity authorized to make withdrawals or payments from the Settlement Fund.

The Settlement Sum shall constitute the total settlement cash outlay by Defendants in connection with the resolution of this Action and this Settlement, except for payments to the Independent Consultants, the costs of the Programmatic Relief described in Exhibit B, and the Employer Payroll Tax Payment described in Section X.G.2 below. The Settlement Sum is inclusive of payment for: (a) all amounts paid to Settlement Class Members, including the Named Plaintiff, for release of the Released Claims, which are to be distributed pursuant to Section X, below; (b) the LWDA Payment; (c) the Service Award paid to Named Plaintiff (as described in Section XI.D), (d) all attorneys’ fees and costs awarded by the Court, including those in connection with securing court approval of the Settlement and the claims process and monitoring by Class Counsel of the Settlement Agreement, other than fees and costs awarded in connection with any successful proceeding in the Court to enforce the terms of this Settlement Agreement; (e) all costs in connection with the Settlement Fund including, but not limited to, those related to Notice, claims processing, legal advice obtained by the Settlement Administrator relating to the establishment of the Qualified Settlement Fund, tax treatment and tax reporting of awards to Settlement Class Members, and preparation of the Settlement Fund’s tax returns (and the taxes associated with such tax returns as defined below); and (f) applicable federal, state, and

local income taxes, and all federal and state unemployment taxes required by law to be withheld and/or paid by Defendants.

The Settlement Sum payment to the Settlement Fund does not include Defendants' share of taxes or contributions (i.e., FICA, FUTA, SUTA, and Medicare) which will be paid separately by Defendants to the Settlement Administrator. Defendants shall, upon notice from the Settlement Administrator, remit any such required tax payment to the Settlement Administrator.

The Settlement Fund shall be allocated as follows, provided that the Court finally approves the Settlement:

(a) \$55,294.50 (which is $\$73,726 * 0.75$) to the LWDA. Should the Court award less, the remainder shall be added to the Settlement Award Fund;

(b) Not to exceed \$27,000 for the fees and costs of the Settlement Administrator, including but not limited to the cost of Notice. Should the Court award less, the remainder shall be added to the Settlement Award Fund;

(c) Not to exceed \$75,000 for Michael Cuenca for the payment of Service Award as described in Section XI.D and as approved by the Court. Should the Court award less, the remainder shall be added to the Settlement Award Fund;

(d) Not to exceed \$30,000 for costs incurred by Class Counsel in connection with this Action, including costs incurred by Class Counsel subsequent to the date of the Order Granting Final Approval and/or pursuant to their continuing obligations under this Agreement (*e.g.*, including the cost for Class Counsel to retain any expert in connection with ongoing Programmatic Relief). Should the Court award less, the remainder shall be added to the Settlement Award Fund;

(e) Not to exceed 30% of the Settlement Sum (\$2,211,775.80) for Class Counsel's attorneys' fees. Should the Court award less, the remainder shall be added to the Settlement Award Fund;

(f) The Parties agree to set aside \$50,000 of the Settlement Award Fund as a contingency fund to effectuate the purposes of the Settlement including, but not limited to, unforeseen errors or other issues arising in administration of the Settlement. Any residual amounts of the contingency fund that remain after expiration of the first 90-day check-cashing period will be considered in determining whether the threshold has been met for distribution of second Individual Settlement Awards. If there is a distribution of second Individual Settlement Awards, the residual amounts of the contingency fund will be added to the funds available for such distribution. If there is no such second distribution, any residual amounts of the contingency fund will be allocated to Legal Aid at Work, a suitable *cy pres* recipient following California standards.

(g) Approximately \$4,923,515.70 to the "Settlement Award Fund" for Individual Settlement Awards to Settlement Class Members, as described in more detail in Section X.

The Settlement Administrator shall have the obligation to return the entire Settlement Fund (including all income and/or interest generated, less Settlement Administration Costs incurred) to Defendants within ten (10) days in the event that this Agreement is rendered null and void.

B. Administration by Trustee.

The Settlement Administrator shall serve as Trustee of the Settlement Fund and shall act as a fiduciary with respect to the handling, management, and distribution of the Settlement Fund. The Settlement Administrator shall act in a manner necessary to qualify the Settlement Fund as a

“Qualified Settlement Fund” under Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. Section 1.468B-1, et seq., and to maintain that qualification.

C. Automatic Allocation of Individual Settlement Awards and Enhancement for Alleged Lost Promotions.

1. Class Members who have not opted out of the Settlement shall receive payments under this Settlement automatically whether or not they submit an Enhancement Claim Form for an enhancement based on any alleged lost promotions. However, if Settlement Class Members seek an enhancement for any alleged lost promotions, they may submit their Enhancement Claim Forms to the Settlement Administrator by U.S. Mail or online at the Settlement Administrator website and in accordance with the procedures set forth in the Notice and on the Enhancement Claim Form (*e.g.*, within forty-five (45) days after the postmark of the date the Notice and Enhancement Claim Form were first mailed).

2. The Settlement Administrator will send each Class Member the Notice and Enhancement Claim Form via first-class United States mail and email, using the mailing and email addresses provided by Defendant to the Settlement Administrator as described in Section V.B.

3. After receiving the list of Class Members from Defendants as described in Section V.B, the Settlement Administrator shall calculate each Class Member’s eligible weeks worked in a Class-Covered Job based on data about the Class Members’ work history provided by Defendants during the Notice Period. The Settlement Administrator will provide that information to each Class Member in the Notice. The Settlement Administrator shall not inform Defendants which Class Members filed Enhancement Claim Forms. To the extent Class Members dispute the number of workweeks to which they have been credited or the amount of their Individual Settlement Payment, Class Members may produce during the Notice Period

evidence to the Settlement Administrator showing that such information is inaccurate. Absent evidence rebutting Defendants' records, Defendants' records will be presumed determinative. However, if a Class Member produces evidence to the contrary, the Settlement Administrator will evaluate the evidence submitted by the Class Member to determine, in consultation with counsel for the Parties, the number of eligible workweeks that should be applied and/or the Individual Settlement Payment to which the Class Member may be entitled within three (3) days after the end of the Notice Period. The workweek dispute must be returned by mail or email to the Settlement Administrator at the specified address or email address and postmarked or emailed before the end of the Notice Period. The date of the postmark or email date will be the exclusive means to determine whether a workweek dispute has been timely submitted.

4. The Enhancement Claim Form provided to the Settlement Administrator for purposes of the claims filing procedure shall be used in connection with that process, and shall not be admissible in this Action, or any other subsequent litigation proceeding against Defendants or the Released Parties for any purpose. The Settlement Administrator shall maintain the confidentiality of all such information in accordance with applicable law and shall enter into an appropriate form of agreement with Defendants concerning the protection of such information.

D. Settlement Administrator Authority to Determine Eligibility for Individual Settlement Awards.

1. Within ten (10) days after the Effective Date, Defendants shall provide the Settlement Administrator with updated information from the Class List for all Settlement Class Members (i.e., the updated Class List). The Settlement Administrator shall use the updated Class List to calculate the Individual Settlement Awards, if any, that should be paid to each Settlement

Class Member from the Settlement Award Fund. Settlement Class Members who do not opt out will receive a share of the Settlement Award Fund based on the formula described below:

2. Pay Claim Award: The “Pay Claim Award” will be based on the number of weeks a Settlement Class Member worked in a Class-Covered Job during the Class Period, the Settlement Class Member’s base salary rate during each of those weeks worked, and whether the Settlement Class Member was exempt or non-exempt during each of those weeks worked. To calculate each Settlement Class Member’s Pay Claim Award, the Settlement Administrator will take the number of weeks worked in a Class-Covered Job during the Class Period and multiply the weeks worked by the Settlement Class Member’s annual base salary during those weeks. For weeks in which the Settlement Class Member was an exempt employee, the product of weeks worked and base salary will further be multiplied by 2.5. The result of this calculation will be part of the numerator for each Settlement Class Member’s share of the final award, “X.” The resulting formula is as follows:

$$X =$$
$$[(\text{weeks worked in nonexempt Covered Position}) \times (\text{salary rate for weeks worked})]$$
$$+ [(\text{weeks worked in exempt Covered Position}) \times (\text{salary rate for weeks worked}) \times 2.5]$$

3. Promotion Claim Award: A “Promotion Claim Award” will be available to Settlement Class Members who submit additional information regarding any alleged promotion denials via their Enhancement Claim Form, which is subject to review by the Settlement Administrator, based on information provided by the Settlement Class Member in the Enhancement Claim Form concerning any alleged promotion denials. Each Settlement Class Member who checks the “Yes” box on the Enhancement Claim Form will be eligible for an additional Promotion Claim Award and will have a Promotion Claim Award added to their Pay

Claim Award in an amount equal to 10% of that Settlement Class Member's X value, defined above. If the Settlement Administrator has any question about whether any Settlement Class Member is eligible for a Promotion Claim Award, the Settlement Administrator will promptly notify counsel for the Parties to resolve the eligibility question. If the Parties cannot agree on a resolution regarding such a rejected Promotion Claim Award, then the unresolved Promotion Claim Award will be submitted prior to the notice period expiration to Judge James for final and binding resolution. The result of this calculation will be part of the numerator for each Settlement Class Member's share of the final award, "Y." The resulting formula is as follows:

$$Y = X \times 0.1$$

4. Total Individual Settlement Awards: Each Settlement Class Member's share of the Settlement Award Fund will be a fraction, with the Settlement Class Member's X value, plus Y value, if any, as the numerator and the sum of all X and Y values for all Settlement Class Members during the Class Period as the denominator, "Z":

$$\text{Fraction of award} = \frac{X+Y}{Z}$$

The fractional amount for each Settlement Class Member will be multiplied against the Settlement Award Fund to determine the "Gross Individual Settlement Award" for each Settlement Class Member. As set forth in Section X.G, the Gross Individual Settlement Award will be reduced by any required deductions for each Settlement Class Member as set forth herein, including employee-side tax withholdings or deductions to yield each Settlement Class Member's "Individual Settlement Award."

5. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Settlement Agreement. If a Class Member timely disputes a determination by the Settlement Administrator about their

eligibility for, or the amount of, their Individual Settlement Award before the end of the Notice Period, the Settlement Administrator shall notify counsel for the Parties of the dispute. Counsel for the Parties will confer in good faith within three (3) days of the end of the Notice Period to assist the Settlement Administrator in resolving the dispute without the necessity of involving the Court. Any disputes not resolved by the Settlement Administrator after conferral with the Parties' counsel concerning the administration of the Settlement will be resolved by the Court, under the laws of the State of California. If not timely disputed per the terms of this Agreement, the Settlement Administrator's determination shall be final and not subject to review by, or appeal to, any court, mediator, arbitrator, or other judicial body, including without limitation this Court. As will be reflected in the final order approving this Settlement, Defendants and Class Counsel shall have no responsibility, and may not be held liable, for any determination reached by the Settlement Administrator.

6. The total amount of such Individual Settlement Awards shall not exceed the Settlement Award Fund. Further, the receipt of Individual Settlement Award by a Settlement Class Member does not alter the calculation of or require additional contributions by Defendants to any employee benefit or retirement benefit to which any Settlement Class Member might be otherwise eligible to receive from any retirement plan sponsored by Defendants, including, but not limited to, profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Settlement Class Members may be entitled under any benefit plans.

E. Distribution of Individual Settlement Awards.

1. Following the determination as to the Individual Settlement Award, if any, that should be paid to each Settlement Class Member from the Settlement Award Fund, and no

later than fifteen (15) days after the Settlement Administrator receives the updated Class List, the Settlement Administrator shall mail all Individual Settlement Awards to each Settlement Class Member (“Notice of Award”). The face of each Individual Settlement Award check shall clearly state that it must be cashed within ninety (90) days. The back of each Individual Settlement Award check shall reconfirm that the Settlement Class Member has waived the Released Claims by stating as follows: “By endorsing or otherwise negotiating this check, I acknowledge that I read, understood, and agree to the terms set forth in the Notice of Settlement of Class Action and I agree to release all of my claims that are covered by the Settlement.” The Settlement Administrator shall, thirty (30) days prior to the check expiration date, send a reminder postcard to those Settlement Class Members who have not yet cashed their Individual Settlement Award checks. The Administrator shall also attempt to contact those Settlement Class Members via telephone (and may also use email if the Settlement Administrator has an email address for the individual). The Settlement Administrator shall perform an address trace for any undeliverable checks, and re-send the checks if a different address is found, within three (3) business days of receipt of any undeliverable check.

2. If more than \$100,000 of the Individual Settlement Awards remain uncashed 90 days after mailing such Individual Settlement Awards, the Settlement Administrator will issue a second distribution to those Settlement Class Members who cashed their Individual Settlement Award checks (their second Individual Settlement Award check) within fifteen (15) days after the 90-day void date. The face of each such second Individual Settlement Award check shall clearly state that it must be cashed within ninety (90) days. 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 amount will be allocated to Legal Aid at Work, a suitable *cy pres* recipient, subject to Court approval and consistent with California Code of Civil Procedure § 384. Any Settlement Class Members whose Individual Settlement Award check(s) are voided still remain bound by the Settlement. No later than ten (10) days after the Individual Settlement Award check void date or second Individual Settlement Award check void date, if second Individual Settlement Award checks are sent, the Settlement Administrator shall provide Class Counsel and Defendants' Counsel with a declaration providing a final report on the disbursements of all Individual Settlement Awards. The Settlement Administrator shall retain documentation and proof of the Individual Settlement Awards for a period of seven (7) years.

F. Non-Admissibility of Fact of Award (or Non-Award).

Except to the extent that it would constitute a set-off in an action for damages claimed for any period covered by this Settlement, neither the fact nor the amount of the Service Award or any Individual Settlement Award, nor the fact of any non-award, from the Settlement Award Fund shall be admissible in any other proceeding for any purpose other than to enforce the Named Plaintiff Release or a Settlement Class Member Release executed or ordered in connection with this Settlement, nor shall it be deemed to be a finding as to the merits of any claim.

G. Tax Treatment.

1. Qualified Tax Status and Tax Responsibilities.

The Settlement Fund shall be established as a Qualified Settlement Fund within the meaning of Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. Section 1.468B-1, *et seq.*, and shall be administered by the Settlement Administrator under the Court's supervision. Defendants shall hereby be deemed to have made an election under Section 468B of the Revenue Code to have the Fund treated as a "Qualified Settlement Fund."

Defendants shall timely furnish statements to the Trustee that comply with Treasury Regulation § 1.468B-3(e) and shall attach a copy of the statements to their federal income tax return that are filed for the taxable year in which Defendants make the required payment(s) to the Settlement Fund. The Parties shall cooperate to ensure such treatment and shall not take a position in any filing or before any tax authority inconsistent with such treatment.

2. Payment of Federal, State, and Local Taxes.

The Parties recognize that the awards to Settlement Class Members from the Settlement Award Fund (including awards from the Settlement Fund to Named Plaintiff) will be subject to applicable tax withholding and reporting, which will be handled as follows: the Settlement Administrator shall serve as trustee of the Settlement Fund and shall act as a fiduciary with respect to the handling, management, and distribution of the Settlement Fund, including the handling of tax-related issues and payments, preparation of IRS W-2 and 1099 Tax Forms, and issuing to Named Plaintiff, Settlement Class Members, and Class Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Settlement. Specifically, the Settlement Administrator shall be responsible for withholding, remitting, and reporting each Settlement Class Member's share of the payroll taxes from the Settlement Fund, and Defendants shall be responsible for the employers' share of payroll taxes as set forth in this Section.

For tax purposes, all Individual Settlement Awards will be allocated as follows: 33.33% shall be treated as W-2 wage payments and 66.67% shall be treated as 1099 non-wage income as compensatory or liquidated damages/non-wage damages, interest, penalties. See Treas. Reg. §1.468B-4. The Parties state that the Released Claims include PAGA claims and California EPA claims, which have penalty and/or liquidated damages provisions, and that there is interest and other damages claims being released.

The portions of Gross Individual Settlement Awards treated as W-2 wages pursuant to Section X.G.2 shall be made net of all applicable employment taxes, including, without limitation, federal, state, and local income tax withholding and the employee share of the FICA tax, and shall be reported to the Internal Revenue Service (“IRS”) and the payee under the payee’s name and social security number on an IRS Form W-2. All standard employee payroll deductions will be made for state and federal withholding taxes, including any other applicable payroll deductions owed by the Settlement Class Members as a result of the Wage Component, resulting in a net wage component. The Settlement Administrator will issue a check and W-2 Form to each Settlement Class Member for the wage component. The portions of Gross Individual Settlement Awards treated as compensatory or liquidated damages/non-wage damages and interest pursuant to Section X.G.2 shall be made without withholding and shall be reported to the IRS and the payee, to the extent required by law, under the payee’s name and social security number on an IRS Form 1099, as shall penalties. The Settlement Administrator will issue a second check and IRS Form 1099 for the remaining non-wage component. Any Service Award made pursuant to Section XI.D shall be made without withholding and reported to the IRS and the payee under the payee’s name and social security number on an IRS Form 1099.

In the event that it is subsequently determined by a tax authority that the Named Plaintiff, any Settlement Class Member, or Class Counsel owes any additional taxes with respect to any money distributed under this Agreement, it is expressly agreed that the determination of any tax liability is between the payment recipient and the tax authorities, and that Defendants shall not be responsible for the payment of such taxes, including any interest and penalties. Named Plaintiff, each Settlement Class Member and Class Counsel agrees to indemnify Defendants for any such taxes, interest, and penalties owed by him/her/them. Defendants make no representations as to

the tax treatment or legal effect of any Service Award, Individual Settlement Awards, or other payments pursuant to this Agreement, and Named Plaintiff and Settlement Class Members are not relying on any statement or representation by Defendants or Defendants' Counsel in this regard.

The Settlement Administrator shall inform Defendants in writing of the employers' share of all taxes or contributions required to be paid by Defendants upon receiving all of the Enhancement Claim Forms and after finalizing and sending out the Notices of Awards. Defendants shall, within twenty (20) business days of such notice, remit all such monies to the Settlement Administrator for payment to appropriate taxing authorities ("Employer Payroll Tax Payment").

The Settlement Administrator shall be responsible for the timely reporting and remitting of the Employer Payroll Tax Payment to the appropriate taxing authorities and shall indemnify Defendants for any penalty arising out of an incorrect calculation and/or interest with respect to late deposit of the same.

Except with respect to the Employer Payroll Tax Payment, the Settlement Administrator shall be responsible for satisfying from the Settlement Fund any and all federal, state, and local employment and withholding taxes, including, without limitation, federal, and state income tax withholding, FICA, FUTA, SUTA, Medicare, and any state employment taxes. The Settlement Administrator shall satisfy all federal, state, local, and other reporting requirements (including any applicable reporting with respect to attorneys' fees and other costs subject to reporting), and any and all taxes, penalties, and other obligations with respect to the payments or distributions from the Settlement Fund not otherwise addressed herein.

The Settlement Administrator shall have its own Employer Identification Number under Internal Revenue Service Form W-9 and shall use its own Employer Identification Number in calculating payroll withholdings for taxes and shall transmit the required employers' and employees' share of the withholdings to the appropriate state and federal tax authorities.

All taxes (including any estimated taxes, interest, or penalties) arising with respect to the income earned by the Settlement Fund ("Settlement Fund Taxes") shall be paid out of the Settlement Fund, including any taxes or tax detriments that may be imposed on Defendants with respect to income earned for any period during which the Settlement Fund does not qualify as a "Qualified Settlement Fund" for federal and state income tax purposes (hereinafter "Settlement Fund Taxes"), and expenses and costs incurred in connection with the operation and implementation of this paragraph (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) any returns described herein or otherwise required to be filed pursuant to applicable authorities) (hereinafter "Settlement Fund Tax Expenses"). Further, Settlement Funds Taxes and Settlement Funds Tax Expenses shall be treated as a cost of the administration of the Settlement Fund. The Parties hereto agree to cooperate with the Settlement Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions set forth in this paragraph.

Circular 230 Disclaimer. EACH PARTY TO THIS SETTLEMENT AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS SETTLEMENT AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS SETTLEMENT AGREEMENT, AND NO WRITTEN

COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS SETTLEMENT AGREEMENT, (B) HAS NOT ENTERED INTO THIS SETTLEMENT AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS SETTLEMENT AGREEMENT.

XI. ATTORNEYS' FEES, EXPENSES OF CLASS COUNSEL, AND ADMINISTRATIVE EXPENSES

A. Class Counsel Attorneys' Fees and Class Counsel Costs.

At least thirty (30) days before the end of the Notice Period , Class Counsel shall petition the Court for an award of attorneys' fees in a total amount not to exceed 30% of the Settlement Sum, *i.e.*, \$2,211,775.80 and costs and expenses not to exceed \$30,000 that shall fully compensate Class Counsel for the attorneys' fees and litigation costs incurred at any time in connection with the Action, including any applicable multiplier. Class Counsel will be issued an IRS Form 1099 for the attorneys' fees and costs detailed in this Section and shall be solely and legally responsible for paying all applicable taxes on the payments made pursuant to this Section. Should the Court award a lesser amount of fees or costs, the difference between this amount and the amount awarded for fees and costs will be added to the Settlement Award Fund.

The Parties agree that the full amount of the attorneys' fees and costs awarded in this Action will be paid from the Settlement Fund. No counsel shall be entitled to attorneys' fees or costs for work performed in this Action other than as provided in this Settlement Agreement, and any fees/costs earned in any Settlement reached or judgment as to the individual, non-class claims of the Named Plaintiff. The instant Settlement Agreement is the exclusive means for recovery of attorneys' fees and costs incurred in this Action by any attorney, law firm and/or other legal services provider, other than as provided herein.

The outcome of any proceeding related to Class Counsel's application for attorneys' fees and costs shall not terminate this Agreement or otherwise affect the Court's Final Approval ruling. The Court's approval of Class Counsel's application for attorneys' fees and costs is not a material term of this Agreement.

B. Defendants' Non-Opposition.

Defendants and their attorneys agree not to oppose any applications for Attorneys' Fees and Expenses by Class Counsel that are fully consistent with Section XI.A.

C. Timing of Attorneys' Fee and Expense Payment.

Any Attorneys' Fees and Expenses payable to Class Counsel shall be distributed from the Settlement Fund pursuant to the Settlement Agreement by the Settlement Administrator serving as Trustee of the Settlement Fund. The Parties agree that Class Counsel are entitled to receive the Court-ordered Attorneys' Fees and Expenses within twenty (20) days after the Effective Date. Defendants shall have no liability or other responsibility for the allocation of such Attorneys' Fees and Expenses among the Named Plaintiff's counsel, which decision shall be made by Class Counsel.

D. Service Award.

At least thirty (30) days before the end of the Notice Period, Class Counsel will seek, and Defendants will not oppose, Court approval for Service Award of \$75,000 to the Named Plaintiff to be paid from the Settlement Fund for Named Plaintiff's participation in the prosecution and settlement of this case. Should the Court award Named Plaintiff a lesser amount for the Service Award, the difference between the amount sought and the amount awarded for Service Award will be added to the Settlement Award Fund.

Defendants agree not to oppose the Court-approved Service Award up to the above-listed amount. The Service Award and the requirements for obtaining such payments are separate and apart from, and in addition to, Named Plaintiff's recovery from the Settlement Award Fund, and are subject to Court approval.

The outcome of the Court's ruling on the application for Service Award shall not terminate this Agreement or otherwise affect the Court's Final Approval ruling. The Court's approval of the application for Service Awards is not a material term of this Agreement.

E. Settlement Administration Costs.

The costs payable from the Settlement Fund to the Settlement Administrator are for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, address searches, calculating estimated amounts per Class Member, tax reporting, distributing the Class Settlement Amount, and providing necessary reports and declarations, and other duties and responsibilities set forth herein to process this Settlement Agreement, and as requested by the Parties ("Settlement Administration Costs"). The Settlement Administration Costs will be paid from the Settlement Fund, including, if necessary, any such costs in excess of the amount represented by the Settlement Administrator as being the maximum costs necessary to administer the Settlement. The Settlement Administration Costs are estimated to not exceed \$27,000 based upon the receipt of a not-to-exceed quote from the Settlement Administrator. To the extent actual Settlement Administration Costs are greater than \$27,000, such excess amount will be deducted from the Settlement Award Fund, subject to the Court's approval. Settlement Administration Costs allocated but not paid to the Settlement Administrator will be distributed to the Settlement Class Members pro rata.

XII. RIGHT OF REVOCATION.

If seven percent (7%) or more of the Class Members validly elect not to participate in the Settlement and file valid Opt-Out Statements as described in Section V.C.7 above, Defendants shall have the right to rescind the Settlement and all actions taken in its furtherance shall be null and void. Defendants must exercise this right within ten (10) calendar days after the Settlement Administrator sends the final list of all Opt-Out Statements to Class Counsel and Defendants'

Counsel by email pursuant to Section V.C. If seven percent (7%) or more of the Class Members opt out of the monetary relief provisions of the Settlement, and Defendants exercise their right to void the Settlement, Defendants shall pay the Settlement Administrator's reasonable fees and expenses incurred as of the date that Defendants exercise their right to void the Settlement.

XIII. CONFIDENTIALITY

A. Confidentiality Regarding This Settlement.

Prior to the time the Named Plaintiff moves for preliminary approval of the Settlement Agreement, Class Counsel and the Named Plaintiff agree to keep the terms of the Settlement confidential.

B. Documents and Information Produced by Defendants and Class Counsel.

All proprietary and confidential documents or information that have previously been provided to either Defendants or Class Counsel as of the date this Settlement Agreement is executed, or which are produced by Defendants or Class Counsel pursuant to any provision of this Settlement Agreement, shall, unless otherwise agreed, be treated as, and thereafter remain, confidential. Said documents and information shall not be disclosed to anyone other than the Court in connection with any proceeding to enforce any provision of this Settlement Agreement.

C. Disposal of Confidential Documents and Information.

All materials, including data, provided to Defendants or by Defendants or Defendants' Counsel to Class Counsel, including but not limited to Defendants' data and reports provided by Class Counsel to Dr. Vekker, shall be returned to Defendants' Counsel or destroyed by Class Counsel and Dr. Vekker as of the date this Settlement Agreement is executed. All materials, including data and reports which are produced by Defendants or Defendants' Counsel to Class Counsel pursuant to any provision of this Settlement Agreement, including as required by Exhibit B, shall be destroyed within sixty (60) days after the completion of the administration of

this Agreement, except that the Parties may keep archival copies of all pleadings and attachments (including material filed under seal) and all work product. Class Counsel further agree that none of the information provided by Defendants (including as required by Exhibit B) shall be used for any purpose other than prosecution of the Settlement of this Action.

D. Settlement Communications.

Neither this Settlement Agreement, nor the Court's preliminary or final approval hereof, or any statements, discussions, communications, or any materials prepared, exchanged, issued, or used during mediation and the negotiation of this Settlement Agreement will be admissible in any forum regarding the propriety of class certification or regarding any other issue or subject of this case or any other case.

XIV. GOVERNING LAW

The parties agree that California law shall govern the validity, construction, and enforcement of this Settlement Agreement.

This Settlement Agreement, including the Exhibits hereto, contains the entire agreement and understanding of the Parties with respect to the Settlement. This Settlement Agreement does not impose any obligations on the Parties beyond the terms and conditions stated herein.

Accordingly, this Settlement Agreement shall not prevent or preclude Defendants from revising their employment practices and policies or taking other personnel actions during the term of this Settlement Agreement so long as they are consistent with this Settlement Agreement.

Furthermore, nothing in this Settlement will be construed as interfering with Defendants' rights to determine the nature, conduct, organization, or structure of their businesses as may be required by law, or as Defendants deem appropriate, except as necessary to give full force and effect to the provisions of this Settlement and its exhibits. This Settlement Agreement and the

terms herein are subject to Defendants' other legal obligations, and nothing herein shall obligate Defendants to take any action that is contrary to said obligations.

XV. OTHER CONDITIONS OF SETTLEMENT

A. Exhibits.

The Exhibits to this Settlement Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

B. Notices to Counsel.

All notices to counsel required or desired to be given under this Settlement Agreement shall be in writing and by overnight mail and email to counsel for the respective Parties. Specifically, such notices shall be mailed Bryan Schwartz of Bryan Schwartz Law and Matthew Helland of Nichols Kaster for the Named Plaintiff, and Heather Morgan and Amanda Bolliger of GBG LLP for Defendants, at their respective addresses set forth below (or to such other address any such Party or counsel may designate in a written notice).

C. Failure to Insist on Strict Compliance.

The failure of any Party to insist in any one or more instances on strict compliance with the terms and conditions hereof shall not be construed to be a waiver of remedies available with respect to any prior or subsequent breach.

D. Modifications to This Agreement.

No material modifications to this Agreement may be made without a written agreement signed by all Parties and prior Court approval.

The Parties shall have the right to seek modification of the Settlement Agreement by the Court to ensure that its purposes are fully effectuated. The Parties may jointly agree to modify the Settlement Agreement with the approval of the Court. Upon application for a modification of

the Settlement Agreement, the movant shall bear the burden of proving by a preponderance of the evidence that circumstances make such modification necessary. If the Court requires certain non-material modifications to be made to this Settlement Agreement as a condition for granting approval, however, then the Parties agree that their counsel can enter into a stipulation to modify this Agreement to conform it to the Court's Order and that signatures of counsel shall suffice for such an amendment.

E. Extension of Deadlines.

The Named Plaintiff and Defendants recognize that from time to time unforeseen events may cause delays in the accomplishment of objectives, no matter how well-intentioned and diligent the Parties may be. Accordingly, with regard to the provisions of this Settlement Agreement that require the Parties to take certain actions within specified time periods (other than deadlines set forth in the Preliminary Approval Order and the deadline for filing claims), the Parties agree that Court approval will not be required for reasonable extensions of deadlines. In the event that any Party determines in good faith that an action required by this Settlement Agreement cannot be taken within the specified time period, counsel for that Party shall promptly notify counsel for the other Party that it anticipates a delay, the reasons for the delay, and a proposed alternative deadline.

F. No Drafting Presumption.

All Parties hereto have participated, through their respective counsel, in the drafting of this Settlement Agreement and, therefore, this Settlement Agreement shall not be construed more strictly against one Party than another.

G. Dispute as to Meaning of Agreement Terms.

In the event of any dispute or disagreement with respect to the meaning, effect, or interpretation of this Settlement Agreement or any Exhibit hereto, or in the event of a claimed

breach of the Settlement Agreement, the Parties agree that such dispute will be resolved and adjudicated only in accordance with the dispute resolution provisions of this Settlement Agreement.

H. Interpretation of Terms.

Whenever possible, each provision and term of this Settlement Agreement shall be interpreted in such a manner as to be valid and enforceable.

I. Severability.

If any portion of this Settlement Agreement is judged to be unenforceable, the remainder of the Agreement shall continue to be valid and enforceable.

J. Integration.

This Settlement Agreement contains the entire agreement between the Parties relating to any and all matters addressed in the Settlement Agreement, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, with respect to such matters are extinguished. No rights hereunder may be waived or modified except in a writing signed by all Parties.

K. Paragraph and Section Headings.

Paragraph and section headings are for convenience of reference only and are not intended to create substantive rights or obligations.

L. Counterparts.

This Settlement Agreement may be executed in counterparts. Each signed counterpart together with the others shall constitute the full Settlement Agreement.

M. Agreement Binding.

As of the date on which Class Counsel and Defendants' Counsel execute this Settlement Agreement, this Settlement Agreement will be binding in all respects, unless it is revoked as set

forth in Section XII, or unless the Court fails to approve this Settlement Agreement and the Settlement Agreement is thus vacated. This Settlement Agreement shall inure to the benefit of, and be binding upon, the Parties hereto and their respective heirs, dependents, executors, administrators, trustees, legal representatives, personal representatives, agents, successors, and assignees; provided, however, that this Settlement Agreement shall not inure to the benefit of any third party.

Class Members will not be deemed third party beneficiaries of the Settlement Agreement and will have no individual right to enforce its terms; rather, only Defendants and the Named Plaintiff, through Class Counsel, may seek to enforce the terms of the Settlement. Class Counsel and counsel for Defendants shall meet and confer before the commencement of any enforcement proceedings.

N. Enforcement.

1. Enforcement of this Settlement Agreement shall be prosecuted by Class Counsel or Defendants' Counsel, not third parties. Class Counsel and Defendants' Counsel shall meet and confer prior to commencement of any enforcement proceedings.

2. No later than thirty (30) days after service of the Compliance Monitor's Compliance Report (see Exhibit B), Defendants' Counsel and Class Counsel shall confer on whether Defendants have used Best Efforts in complying with the obligations under Exhibit B or any other terms of this Agreement. If the Parties disagree, then Class Counsel shall, within fourteen (14) days, submit to Judge James a statement of position contending that Defendants failed to apply Best Efforts in complying with the obligations under the terms of this Agreement. Defendants may, within fourteen (14) days of receiving that statement of position, submit a response/opposition to Judge James. The Parties may rely on and/or reference materials or reporting generated in connection with the Settlement and its implementation notwithstanding

any claim of privilege by which the materials were created. (The materials will be submitted under the Parties' Stipulated Protective Order and/or as confidential settlement communications.) Upon receiving the Parties' submissions, Judge James may request additional written submissions, or require the Parties to participate in a telephonic or in-person conference, if appropriate. In any event, within thirty (30) days of receiving the Parties' submission(s), Judge James shall issue a decision regarding whether Defendants have met their obligations or are non-compliant with the Agreement in any respect. For the first request for services by Judge James pursuant to this Paragraph, Defendants shall pay Judge James' fees and expenses separate and apart from the Settlement Fund. For all subsequent mediations and/or requests for services by Judge James pursuant to this Paragraph, Defendants shall pay Judge James' fees and expenses unless it is determined that the request for service was made in bad faith, in which case Judge James' fees and expenses shall be paid by Class Counsel.

3. The Alameda County Superior Court shall retain continuing jurisdiction for enforcement of this Settlement. Should either Party disagree with Judge James' decision pursuant to Section XV.N.2, such Party may file an objection before the assigned Alameda Superior Court judge pursuant to CCP § 664.6. The Court shall review the objection de novo, but the party objecting to Judge James' decision shall bear the burden of persuasion based on a preponderance of the evidence as to whether best efforts were satisfied. The objecting party may rely on information shared as part of the Compliance process, but reference to confidential data must be filed pursuant to the Parties' Stipulated Protective Order.

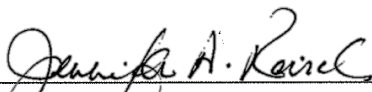
O. Stay of Litigation

The Parties agree that upon the execution of this Agreement, all litigation in the Action shall be stayed, except to effectuate the terms of this Agreement.

Approved As To Form And Content By Counsel:

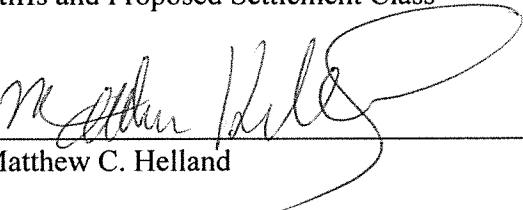
Dated: May19, 2021

BRYAN SCHWARTZ LAW

By: 
Bryan Schwartz
Jennifer A. Reisch, Of Counsel

Dated: May18, 2021

**NICHOLS KASTER, LLP, Attorneys for Named
Plaintiffs and Proposed Settlement Class**

By: 
Matthew C. Helland

Dated: May , 2021

GBG LLP, Attorneys for Defendants

By: _____
Heather Morgan

SO AGREED:

NAMED PLAINTIFF

By: _____
Michael Cuenca

O. Stay of Litigation

The Parties agree that upon the execution of this Agreement, all litigation in the Action shall be stayed, except to effectuate the terms of this Agreement.

Approved As To Form And Content By Counsel:

Dated: May __, 2021

BRYAN SCHWARTZ LAW

By: _____
Bryan Schwartz

Dated: May __, 2021

NICHOLS KASTER, LLP, Attorneys for Named
Plaintiffs and Proposed Settlement Class

By: _____
Matthew C. Helland

Dated: May 27, 2021

GBG LLP, Attorneys for Defendants

By:  _____
Heather Morgan

SO AGREED:

NAMED PLAINTIFF

By: _____
Michael Cuenca

O. Stay of Litigation

The Parties agree that upon the execution of this Agreement, all litigation in the Action shall be stayed, except to effectuate the terms of this Agreement.

Approved As To Form And Content By Counsel:

Dated: May __, 2021

BRYAN SCHWARTZ LAW

By: _____
Bryan Schwartz

Dated: May __, 2021

**NICHOLS KASTER, LLP, Attorneys for Named
Plaintiffs and Proposed Settlement Class**

By: _____
Matthew C. Helland

Dated: May __, 2021

GBG LLP, Attorneys for Defendants

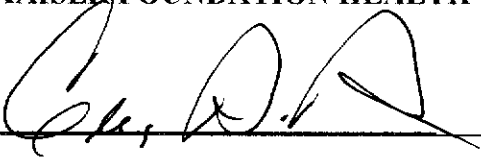
By: _____
Heather Morgan

SO AGREED:

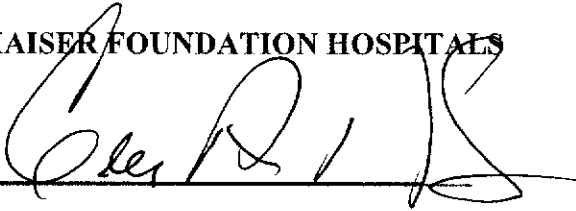
NAMED PLAINTIFF

By:  _____
Michael Cuenca

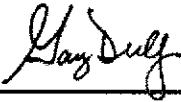
FOR KAISER FOUNDATION HEALTH PLAN, INC.

By: 

FOR KAISER FOUNDATION HOSPITALS

By: 

FOR THE PERMANENTE MEDICAL GROUP, INC.

By: 

FOR SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP

By: _____

FOR KAISER FOUNDATION HEALTH PLAN, INC.

By: _____

FOR KAISER FOUNDATION HOSPITALS

By: _____

FOR THE PERMANENTE MEDICAL GROUP, INC.

By: Gay Duff

FOR SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP

By: Remon [Signature] 5/25/2021

Appendix 1 - Class - Covered Jobs

Covered Jobs

Job Code	Job Description
10003	Support Svcs Adm Senior
10113	Support Svcs Admin Lead
10114	Support Svcs Bus/Proj Coord
10161	Executive Assistant I
10165	Executive Assistant II
10309	Executive Consultant III
10310	Business Analyst Sr AIS BPA
10311	Dir,Data Rpt&Analytics
10323	Data Specialist, Junior
21002	Assoc Staff Asst
21003	Staff Assistant
21005	Sr Staff Assistant
58126	Pharmacy Marketing Asst
221015	Supv Administrative Svcs SH
221034	Project Mgr II
221035	Project Mgr III
221231	Sr Operations Specialist SH
911438	Ldr Strategic Implementation
914016	Admission Asst KPPAAC
921000	Administrative Assoc
921002	Assoc Staff Asst
921003	Staff Asst
921005	Sr Staff Asst
921006	Exec Staff Asst
921007	Supv Support Services
921009	Mgr Administrative Services
921015	Supv Administrative Services
921020	Administrative Svcs Coord I
921021	Administrative Svcs Coord II
921022	Operations Coord
921032	Project Analyst
921033	Project Mgr I
921034	Project Mgr II
921035	Project Mgr III
921036	Dir Support Services

921202	Administrative Svcs Coord III
921206	Program Administrator
921209	Mgr Admin Svcs & Exec Support
921221	Program Coord
921222	Dir Volunteer Services
921230	Mgr Support Services
921231	Sr Operations Specialist
921232	Pharmacy Services Supv
921234	Exec Asst to Reg'l President
921235	Student Admissions Support Rep
921237	Career Svcs Program Manager
921238	MOTP Associate
921240	Admin Specialist III
921241	Admin Specialist IV
921242	Mgr Pharmacy Admin Svcs Cons
921245	Exec Ops Spec, NCAL Regl Pres
957128	Student Services Administrator
957356	Management Consultant
958126	Pharmacy Marketing Asst
983020	Events Coord I
987102	Practice Leader Consulting
987103	Group Leader Consulting
987104	Sr Consultant
987105	Consultant
987106	Sr Analyst
987107	Analyst
987111	Dir Mgrl Consulting Svcs
987115	Perf Improvement ConsInt
987120	Consulting Mgr I
987121	Mgrl Sr Consultant
987122	Mgrl Consultant
987123	Consulting Mgr II
987130	Exec Consultant I
987131	Exec Consultant II
987132	Exec Consultant III
987133	Lead Consultant
987135	Managing Dir Mgmt Consulting
987136	Mng Dir Bus Planning & Dev
987141	Proj Dir Strategic Implntn
987142	Assoc Analyst

987143	Managing Dir Special Projects
987144	Culture Change Leader
987146	Practice Specialist
987150	Mgr Clinical Consulting
987154	Operations Specialist
987157	Program Mgr IV
987159	Consulting Assoc
987160	Sr Consulting Assoc
987161	Lead Consulting Assoc
987162	Consulting Engagement Leader
987163	Sr Consulting Practice Mgr
987167	Consultant Opnl Excellence
987169	Sr Consultant Opnl Excellence
987170	Principal Consultant Opnl Excl
987172	Dir Operational Excellence
987175	Planning Analyst
987176	Sr Planning Analyst
987177	Assoc Planning Mgr
987178	Planning Mgr
987179	Sr Mgr Planning
987180	Dir Delivery System Planning
987186	Area Portfolio Leader
987189	Dir TPMG Strategic Initiatives
987190	Assoc Dir Mgrl Consulting Svc
987191	Assoc Consultant Opnl Excl
987195	Mng Dir Delivery System Plng
987196	Exec Consultant IV
987201	Director Strategic Planning
987204	Mng Dir Strategy & Business Dv
987207	TPMG Regl Dir Cap & Del Sys Pl
987208	Special Projects Dir
989001	Mgr Volunteer Svcs SA
989002	Volunteer Coord
989009	Volunteer Services Coord
83	Senior Business Consultant
139	Dir Consultant
151	Secretary
154	Mailroom Clerk
321	Project Manager
444	Senior Meeting Planner

471	Executive Assistant
516	DirSpecialProjects
568	Senior Director, Consultant
570	Manager, Operations
572	Practice Leader
641	Ungraded Exempt Manager
679	Administrative Assistant I
680	Administrative Assistant II
681	Administrative Assistant III
682	Administrative Assistant IV
683	Executive Assistant I
684	Executive Assistant II
685	Supervisor, Admin Support
686	Operations Specialist I
687	Operations Specialist II
706	Executive Consultant II
737	Executive Consultant I
738	Executive Consultant III
743	Executive Consultant
853	Program Manager I
854	Program Manager II
855	Program Manager III
856	Program Manager IV
994	Dir Bus Process Integration
1206	Legal Admin Asst II
1207	Legal Admin Asst III
1208	Legal Admin Asst IV
1265	HR Svc Ctr Mgmt Content Lead
1266	HR Svc Ctr Mgmt Team Mgr I
1267	HR Svc Ctr Mgmt Team Mgr II
1268	HR Svc Ctr Mgmt Ops Mgr
1281	Business Process Analyst
1282	Sr. Business Process Analyst
1283	Business Process Consultant
1284	Sr Business Process Consultant
1285	Manager, Business Process Mgt
1286	Sr Manager, Business Proc Mgt
1287	Director, Business Process Mgt
1327	Business Supt Analyst I
1328	Business Supt Analyst II

1329	Business Supt Analyst III
1412	Manager, Project Management
1413	Sr Manager, Project Management
1581	PO PS
1584	Inter II Project Manager
1720	Dir, HR Svc Ctr Ops
1725	HRSC Specialist I
1726	HRSC Specialist II
1727	HRSC Specialist III
1728	HRSC Specialist IV
1729	HRSC Contact Analyst Assoc
1730	HRSC Contact Analyst Int
1731	HRSC Contact Analyst Sr
1762	Business Process Cons, Lead
1769	Sr Mgr Workforce Information
1770	Dir Workforce Information
1771	Dir Onelink Admin & Strategy
1801	Data Management Associate
1802	Data Management Intermediate
1803	Data Management Senior
1804	Data Management Tech Lead
1805	Data Management Cnslt/Spec
1814	Dir Bsiness Plnning & Analysis
1826	Special Assistant to the CEO
1906	NLD Admin Manager
1909	JMO Associate
1914	Sr Mgr Rptng Perf Measurement
1967	Recruiting Mrktg & Media Spec
2009	Mng Dir Delivery System Plng
2010	Sr Dir Perf Monitrng & Imprvnt
2043	Provider Engagement Manager
2045	NCA Service Liaison Team Ldr
2048	Contract Portfolio Lead
2073	Executive Assistant I-Legal
2079	Natnl Network Mgmt Cnsltnt
2082	Jr Advncd Analytics Cnsltnt
2084	Lead Advncd Analytics Cnsltnt
2085	Sr Advanced Analytics Cnsltnt
2095	Executive Assistant II- SOM
2096	Project Manager Sr

2104	Ntl Mgr Lgl Dpt Adm Ops-PT NE
2132	Chief of Staff- SOM
2135	Executive Consultant I- SOM
2142	Admin Assistant IV-SOM
2143	Executive Assistant II
2144	Executive Consultant III- SOM
2151	Inter II Project Manager
2159	Project Manager Inter- SOM
2160	Project Manager Sr
2161	Project Manager Lead
2167	NCA Regional Service Liaison
2192	Mgr, Advanced Analytics
2209	Tech Bus Anlst Int
2210	Tech Bus Anlst Sr
2212	Tech Bus Anlst Sr Sp Cnslt
2223	Product Owner ES Sr
2224	Portfolio Mgr-ES
2231	Dir Care Coord Medica & Vln Pop
2250	Dir Soc Svcs Resource Locator
2254	Dir,Data Rpt&Analytics
2256	Busnss Process Automation Dir
2257	Consumer Data Integration Dir
2258	Advanced Analytics Director
2260	Dir UAT & Joint Prtnshp Tsting
2264	Business Consultant - SOM
2265	Fin Bus Consultant
2266	Business Ops Mgr- SOM
2268	Board Svcs Consultant-SOM
2272	Sr Dir Perf Mgmt & Strategy
2276	HR Rptg & Analytics Sr Cnslt
2278	Innovation & Design Sr Spec
2280	Bus Prcs Autmtn Prdct Mgt SMgr
2281	Bus Prcs Atmtm Ops & Sprt SMgr
2294	Product Manager Sr AIS BPA
2295	Product Manager Spclst AIS BPA
2297	Bot Processor Sr AIS BPA
2299	Engagemnt Success Mgr I AISBPA
2301	Integration Architect AIS BPA
2304	Business Cnsltnt Spec AIS BPA
2305	Reporting Cnsltnt Spec AIS BPA

2306	Sr Dir,Data Rpt&Analytics
2309	Exec Asst to Chairman & CEO
2329	Sr Dr KPIF Srvc & Admin
2331	Technical Security Proj Mgr
2332	Sr Mgr,Data Stewards VRDO
2333	Custmr Experience Analyst V
2334	Project Mgmt Principal
2350	Sr Dir, Strategic Initiatives
2351	Group Leader Data Consulting
2352	Sr Manager, Employer Services
2353	Director, Employer Services
2358	Business Insights Analyst Sr
2377	Site Administrator-SOM
2383	Project Coord SOM
2393	Sr Dir Pharmacy Analytics
2394	Dir Financial Mgmt PMO
2401	Dir AIS Medical Expnse Advrsry
2413	Faculty Dev Coord- SOM
2421	Admin Asst II-SOM
2423	Sr Mgr HPPSA Support Services
2424	Associate, AIS MedX Advisory
2425	Sr Associate, AIS MedX Advisry
2426	Engagemnt Mgr AIS MedX Advisry
2427	Sr Engagmt Mgr AIS MedX Advrsry
2431	Sr Mgr Advncd Analytics (SPI)
2444	Thrive Local Cmmnity Hlth Ld
2456	Shipping & Rec Clk-SOM
2457	Ops Assistant-SOM
2478	Sr Dir Mbr Admin Prodctn Suppt
30014	Business Consult/Analyst Int
30015	Business Consult/Analyst Sr
30016	Business Consult/Analyst Lead
30017	Business Consult/Analyst Spec
30076	Project Manager Inter
30077	Project Manager Sr
30078	Project Manager Lead
30079	Project Manager Cons/Spec
30082	Performance Analyst Int
30083	Performance Analyst Sr
30089	Qual/Performance Excel Sr Mgr

52	Dir Lic & Accred
1205	Dir Clin Anl Scpmg
1208	Mgr Consulting Sr
1230	Analyst
1231	SR ANALYST
1232	Conslt
1233	Sr Conslt
1234	Group Leader
1235	Ldr Prac Consult
1236	Mgr I Consulting
1237	Managerial Sr Conslt
1238	Mgr II Consulting
1239	Managerial Conslt
1241	Exec Conslt I
1242	Exec Conslt II
1243	Exec Conslt III
1248	Ld Bus Process Consult
1253	Mgr I Program Manager
1255	Mgr III Program Manager
1258	PRACTICE LDR LMP CNSLT
2702	Dir Consulting Svcs
2704	Dir Proj Strtgc Impl
4014	Unit Mgr
4215	MGR ADMITTING
5001	Mgr Diag Imag Clerical Svcs
6108	Mgr Nrsg Admin Svc
6575	Ad Svcs Mgr Psych Addict Med
6605	DIR VOLUNTEERS
6606	Dir Vols-Site
6612	ASST. DIR OF VOLUNTEERS
6613	MGR GIFT SHOP
10295	Sr Meeting Planner
10511	HC Support Representative
11030	Emp Svcs Specialist
11031	Sys Youth Workforce Coord
11041	PROJECT CONSULTANT
11241	Sr Analytical Proj Mgr
11242	Analytical Proj Mgr
11248	ASSOCIATE CONSULTANT
11249	Prac Spec

11252	Perfrmnc Imprvmnt Cons
11253	Fitness Program Manager
11254	MNGDIR ORG EFF LRNG & LDRSP
11263	Mng Dir Special Projects
11265	Mng Dir Hosp Strat & Impl
11380	SR MGR ADMIN SVCS
11543	Sr Anl Clin Systems
11547	Proj Mgr I
11549	PROJ MGR II
11550	Proj Mgr III
11556	Staff Specialist
11561	Assoc Staff Spec
11588	PROJ MGR I NON-EXEMPT
11727	Supv Ofc Svs
11728	Sup Support Services
11729	Supv Admin Svcs
11731	Mgr Admin Svcs
11760	Project Analyst
11837	Coord Vol Svr Hspc Hh
12710	Org Development Consultant
12712	Lmp Facilit'n Prac Specialist
12791	Hlth Educ Asst
14003	Executive Staff Specialist
17903	Sr Mgr, Nat Implant Registries
17909	Mgr, Upstream Community Health
18030	Ops Specialist
18151	Knowledge Base Program Mgr
18152	Regional Workflow Consultant
18153	SSD Staff Business Specialist
18154	SSD Sr. Business Specialist
18155	SSD Lead Business Specialist
18156	PROJECT MGR II NON EXEMPT
18157	SSD HC SITE LEADER
18158	SSD HC SITE SUPV
18161	Clinical Analysis Consultant
18162	Sr Clinical Analysis Consult
18168	SSD CRED SITE SPECIALIST I
18170	SSD CRED SR SITE SPECIALIST
18172	Lead Consultant
18173	Evidence-Based Med CnsInt

18174	Sr. Evidence-Based Med CnsInt
18179	Regl Dir, Strat Execution RPMO
18180	Ldr Strategic Implementation
18181	Data Scientist Innovation
18182	Dir Evidence Based Medicine
18183	Dir, Med Device Surv & Assess
18184	Quality Engineer - Optical Lab
18191	Exec Conslt III Medi Cal
18603	Simulation Coordinator
18604	Mgr Operations Support
18610	Supervisor Admitting
18611	ASST DIR ADMITTING
18613	Sr Residency ProgAdministrator
18614	Residency Prog Administrator
18615	Simulation Coord Med Ctr
18618	SCPMG Centralized Timekeeper
18620	JMO Associate
18621	JMO Assoc Healthcare Ops
18624	Supervisor, GPEU
18625	Mgr Healthy Living Store
18626	Admin Spec I - UHW
18627	Admin Spec II - UHW
18628	Admin Spec III - UHW
18629	Admin Spec IV - UHW
18630	Admin Svc Coord I - UHW
18631	Admin Svc Coordinator II - UHW
18632	Wellness Store Clerk
18633	HC Operations Spec
18636	Admin Spec II - USW 7600
18637	Admin Spec III - USW 7600
18639	Admin Svcs Coord II - USW 7600
18640	Supervisor, Health & Welfare
18641	Supervisor, Retirement
18643	GPEU Leader
18645	CompleteCare Web Project Coord
18646	Sup Support Services Medi Cal
19301	Lead Improvement Advisor
19362	Attendance Manager
24136	SR MED STAFF COORD
24140	Medical Staff Coord

24395	Stfg Ck Acs
24396	Stfg Coord
25181	Admin Spec IV
25182	Admin Spec I
25183	Admin Spec II
25184	Admin Spec III
25185	ADMIN CLERK
25186	ADMIN SVCS COORD I
25187	Admin Svcs Coord II
25189	Pop Mgmt Sup Coord
25191	Admin Spec IV - Bkfld
25196	Assoc Proj Anl
25199	Admin Spec III - Bkfld
25212	Log Coord Acad Aff
25226	Research Activities Coordinato
28608	Admin Resident
30902	Staffing Clerk UHW
30904	Pop Mgmt Support Coord UHW

Additional Covered Jobs

Job Code	Job Description
797*	Business Analyst-Intermediate*
798*	Business Analyst-Senior*
799*	Business Analyst-Specialist*
800*	Business Analyst-Sr Spec/Cons*
801	Project Coordinator
803	Project Manager-Senior
804	Project Manager-Specialist
807	Content Analyst-Intermediate
808	Content Analyst-Senior
1273	Supervisor, Business Unit IT
1274	Manager, Business Unit IT
1279*	Data Production & Analysis III*
1280*	Data Production & Analysis IV*
1754	Content Management Sr
1801	Data Management Associate
1802	Data Management Intermediate
1803	Data Management Senior
1804	Data Management Lead

1805	Data Management Cnslt/Spec
2061	Sup Data Anlys & Rptg
10010	Business Consulting Lead
10011	Business Consulting Cnslt/Spec
10045	Management Manager
10046	Management/Sr Manager/Director
10074	Project Management Senior
10077	Program Management Cnslt/Spec
10196	Business Ops Analyst Asc
10197	Business Ops Analyst Inter
10198	Business Ops Analyst Sr
10199	Business Ops Analyst Ld
10200	Business Ops Analyst CS
10281	IT Business Support Int
10282	IT Business Support Sr
10283	IT Business Support Ld
10299	Systems Support Apprentice
12016	Sr Business Analyst
12022*	Consulting Data Analyst*
12023*	Sr Consulting Data Analyst*
12024*	Data Consultant*
12079*	Sr Data Consultant*
12095	Business Analyst I
12105	Systems Consultant
18709	SSD HC Business Consultant
30128	CSC Bus Systems Analyst Sr
924100	Business Analyst
924102	Sr Business Consultant
924802*	Sr Data Consultant*
924803*	Group Leader Data Consulting*
924804*	Data Consultant*
924805*	Sr Consulting Data Analyst*
924806*	Consulting Data Analyst*

* These jobs are being reclassified to the new Data Analytics function.

Exhibit A

NOTICE OF SETTLEMENT OF CLASS ACTION

ISSUED BY ORDER OF THE ALAMEDA SUPERIOR COURT

[SETTLEMENT ADMINISTRATOR]

[ADDRESS]

[TELEPHONE]

***** NOTICE *****

To Certain Current and Former Hispanic or Latinx Employees of Kaiser Foundation Health Plan, Inc., Kaiser Foundation Hospitals, The Permanente Medical Group, Inc., and Southern California Permanente Medical Group (together, “Kaiser-Related Entities” or “Defendants”)

Defendants’ records indicate that at some time between June 17, 2016 and March 31, 2021 (the “Class Period”), you worked for one or more of the Kaiser-Related Entities in California in a job that is covered by a proposed class action settlement (“Settlement”).

PLEASE READ THIS NOTICE CAREFULLY AND FULLY.

This Notice describes a proposed Class Action Settlement Agreement and related matters that may affect your legal rights, including how to seek an enhanced monetary award from the Settlement Fund or exclude yourself from the Settlement if you worked in a job that is covered by the Settlement.

1. INTRODUCTION

On June 17, 2020, a class action lawsuit was filed against Kaiser Foundation Health Plan, Inc., Kaiser Foundation Hospitals, and The Permanente Medical Group, Inc. in the Superior Court of Alameda County. The Lawsuit was filed by Michael Cuenca (the “Named Plaintiff”) on behalf of himself and a proposed class of certain Hispanic or Latinx employees of the Kaiser-Related Entities. On April 23, 2021, the Named Plaintiff filed a Second Amended Complaint in the Lawsuit in the same court that adds Southern California Permanente Medical Group as a defendant. **This is not a lawsuit against you, and you are not being sued.** This lawsuit, *Cuenca, et al. v. Kaiser Foundation Health Plan, Inc., et al.*, Case No. RG20065123 (the “Lawsuit” or “Action”) makes claims for: (i) unequal pay based on race or national origin; (ii) disparate treatment and pattern and practice discrimination based on race or national origin 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 or national origin 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:

- California Fair Employment and Housing Act, Cal. Gov. Code § 12940 et seq. (“FEHA”)
- California Equal Pay Act, as amended, Cal. Labor Code §§ 1197.5 and 1194.5 (“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”)
- 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”)

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 Named Plaintiff has now reached an agreement with the Kaiser-Related Entities to settle the Lawsuit on behalf of himself and the Settlement Class. This agreement is referred to as the “Class Settlement,” and is set forth in the Class and PAGA Settlement Agreement and Release (the “Agreement”) on file with the Clerk of the Superior Court for Alameda County (the “Court”).

The Class 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 Class Settlement, and the parties are now seeking final Court approval, which is required for the Class Settlement to become effective. Payments will be made only after the Court approves the Settlement and any appeals are resolved.

The Class Settlement provides for Settlement Class Members to receive compensation as described below under the heading “Individual Settlement Awards.” You have been identified as a member of the Settlement Class, which is why you are receiving this notice.

2. BACKGROUND OF THE CLASS SETTLEMENT

The parties and their attorneys have conducted investigations of the facts and law, including, among other things, the informal exchange of information and documents.

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.

The Named Plaintiff and his counsel believe that the claims asserted in the Lawsuit have merit. However, they also recognize and acknowledge the expense and length of continued proceedings necessary to pursue the Lawsuit through trial and possible appeals. The Named Plaintiff and his counsel have also taken into account the uncertainty of the outcome and the risk of litigation. Thus, the Named Plaintiff and his counsel engaged in intensive arm’s length settlement negotiations with the Kaiser-Related Entities and their attorneys. The Named Plaintiff and his counsel believe that the Class Settlement is fair, reasonable, and adequate and in the best interests of the Settlement Class (defined below) and the Named Plaintiff.

The Kaiser-Related Entities believe that they support racial equity and disagree that the claims asserted in the Lawsuit have any merit. The Kaiser-Related Entities have denied and continue to deny all of the claims made by the Named Plaintiff and all allegations of wrongdoing and liability. The Kaiser-Related Entities believe that they have valid defenses to the Named Plaintiff’s and Class Members’ claims. However, the Kaiser-Related Entities believe that further litigation of this case would be protracted, expensive, and contrary to its best interests, especially since they would prefer to use their financial resources to advance equity than to pay legal fees. By agreeing to settle, the Kaiser-Related Entities are not admitting liability as to any of the factual or legal allegations in the lawsuit, or that the lawsuit should proceed as a class or representative action. The Kaiser-Related Entities have agreed to settle the case as part of a compromise with the Named Plaintiff and Class Counsel to avoid the costs of additional litigation. The Kaiser-Related Entities support this Settlement and believe that it is the best way to resolve the Lawsuit while minimizing further expenditures that are not tied to its mission.

3. THE PROPOSED CLASS SETTLEMENT

Without admitting any wrongdoing, the Kaiser-Related Entities have agreed to pay a Settlement Sum of \$7,372,586, inclusive of all costs of administration, payments of individual monetary awards to Settlement Class Members (“Individual Settlement Awards”), any service awards to the Named Plaintiff, attorneys’ fees and costs for the Named Plaintiff’s counsel, and other expenses, to resolve pay and promotion discrimination claims for the Settlement Class, as stated in the release provisions of the Agreement and summarized below.

The Kaiser-Related Entities also have agreed to certain business practices as summarized below. A comprehensive list of these practices can be found in Exhibit B to the Settlement Agreement.

The following is a summary of the Class Settlement provisions. The complete terms of the proposed Class Settlement are stated in the Agreement, a copy of which is available at the following website: **[INSERT SETTLEMENT ADMINISTRATOR’S CASE WEBSITE]**.

4. INDIVIDUAL SETTLEMENT AWARDS

Under the terms of the proposed Class Settlement, all Settlement Class Members will automatically receive an Individual Settlement Award if they do not opt out of the Class Settlement. **In addition, Settlement Class Members may submit Enhancement Claim Forms to seek additional (enhanced) money under the Settlement. Class Members who opt out of the Class Settlement by following the procedure described below will not receive an Individual Settlement Award. Information about how to submit an Enhancement Claim Form or how to opt out of the Class Settlement is listed below in Section 12.**

Individual Settlement Awards will come from the Settlement Award Fund, the amount remaining after the following line items are deducted from the Settlement Fund (\$7,372,586 plus interest) subject to Court approval: \$27,000 for the cost of administering this Class Settlement, up to (\$2,211,775.80) in attorneys’ fees, up to \$30,000 in reimbursement of costs incurred to litigate this case, \$55,294.50 to the state of California, a \$50,000 contingency fund, and up to \$75,000 as a service award to the Named Plaintiff for his efforts in this Lawsuit (“Settlement Award Fund”). In other words, the minimum Settlement Award Fund is \$4,923,515.70.

Individual Settlement Awards will be paid automatically by dividing the Settlement Award Fund among Settlement Class Members according to a formula approved by the Court. This formula fairly 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 249-week Class Period (i.e., June 17, 2016 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 June 17, 2016, and March 31, 2021, you worked ___ weeks in an exempt covered position and/or ___ weeks in a non-exempt covered position. If you believe the information regarding your weeks worked in a covered position during the 249-week Class Period is not accurate, please contact JND at ### by __, 2021 [45 days after mailing Notice].

The Settlement Administrator will add the value of each column above (the total Individual Pay Variable + the Individual Promotion Variable, if any) to get your Total Individual Variable. The average Individual Settlement Award, prior to tax withholdings, will be \$__ for exempt Settlement Class Members, and \$__ for non-exempt Settlement Class Members. More information about the requested attorneys’ fees and costs and the Named Plaintiff’s service award is included in Section 11 below.

The Settlement formula used by the Settlement Administrator to calculate each Settlement Class Member's Total Individual Variable will be as follows:

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 10 below) from June 17, 2016 through March 31, 2021	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 10 below) from June 17, 2016 through March 31, 2021, and multiply this number by 2.5	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

5. TAX INFORMATION

Please note that 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 66.67 percent of your Individual Settlement Award will be reported as non-wage income on an IRS Form 1099. Class Counsel are not tax advisors and cannot give you advice on any tax matters. You are responsible for your own taxes. You should consult a tax professional for more information about your own specific situation.

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 to those Settlement Class Members who cashed their Individual Settlement Award checks (their second Individual Settlement Award check). 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 such uncashed checks shall be donated to the non-profit organization, Legal Aid at Work. Any Settlement Class Members whose Individual Settlement Award check(s) are voided still remain bound by the Settlement.

6. NO EFFECT ON EMPLOYEE BENEFIT PLANS

Neither the Class Settlement nor any amounts paid under the Class 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.

7. BUSINESS PRACTICES

The Kaiser-Related Entities have also agreed to be bound by the Settlement for a period of three years and have agreed to certain business practices for jobs covered by the Settlement. A comprehensive list of these practices can be found in Exhibit B to the Settlement Agreement, which can be read in full at [\[SETTLEMENT ADMINISTRATOR'S website\]](#), and 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 Settlement Class. This review will be completed within one to three years after the Effective Date of the Settlement, depending on the particular job family. 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 Settlement Class. This career development work includes using job analysis output to identify career tracks and develop career guides and developmental resource guides for certain jobs covered by the Settlement within 18 months 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;
- The retention of an independent expert to conduct annual statistical analyses of promotion data for disparate impact for three years;
- The appointment of an internal Compliance Officer who will be responsible for ensuring the timely implementation of these business practices as well as external reporting to Class Counsel as required by the Settlement;
- 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 job families covered by the settlement;
- 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;
- 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 Kaiser-Related Entities' organizations. Annual audits will be conducted of complaint logs for trends and potential repeat issues with certain managers or within certain parts of the organization.

8. RELEASES

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

A brief summary of the claims being released is listed below. The full terms of release are set forth in Section VI of the Settlement Agreement. You may obtain a copy of the Settlement Agreement at the Settlement website: [\[SETTLEMENT ADMINISTRATOR’S website\]](#).

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 Named Plaintiff) 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 Second Amended Complaint and any prior version of the Second Amended Complaint filed in this Action relating to race or national origin discrimination in pay or promotion, failure to prevent race or national origin-based pay and promotion class discrimination, or any alleged denial of equal pay based on race or national origin. The rights and claims released (collectively, the “Released Claims”) include: (i) claims for unequal pay based on race or national origin, (ii) claims for disparate treatment and pattern and practice discrimination based on race or national origin 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 or national origin 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 and 1194.5, California’s Business & Professions Code §17200, et seq., and the California Private Attorneys General Act of 2004, Cal. Lab. Code §§2698-2699.

9. 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 Fifty-Five Thousand Two Hundred Ninety-Four Dollars and Fifty Cents (\$55,294.50) 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 distributed to Class Members as part of the Settlement.

10. THE SETTLEMENT CLASS

Solely for purposes of this Class Settlement, the Parties have agreed to the certification of the following Settlement Class: Hispanic or Latinx employees employed full-time by Kaiser Foundation Health Plan, Inc., Kaiser Foundation Hospitals, The Permanente Medical Group, Inc., or Southern California Permanente Medical Group in California in a Class-Covered Job in any of the following Regions at any time between June 17, 2016 and March 31, 2021: Northern California (NCAL); Southern California (SCAL); California locations of the Program Offices Region; and California locations of the KP-IT Region. A "Class-Covered Job" means a full-time occupied, exempt or non-exempt, non-union, non-clinical, Director-level or below job in the job families and job codes listed in Appendix 1 to the Settlement Agreement. This includes designated jobs in Administrative Support, Consulting Services, and similar positions at each of the Kaiser-Related Entities.

You have received this Notice, and are therefore affected by this Settlement, because Defendants' records indicate that you are a Settlement Class Member.

11. ATTORNEYS' FEES AND COSTS, SETTLEMENT ADMINISTRATOR COSTS, AND CLASS REPRESENTATIVES' SERVICE AWARDS

Class Members are not personally liable for any fees and costs. Counsel for the Named Plaintiff and the Settlement Class ("Class Counsel") are the firms Bryan Schwartz Law and Nichols Kaster, PLLP. As is routine in class action cases, Class Counsel will request to be paid a sum for all past and future attorneys' fees, costs, and expenses in an amount to be determined by the Court. Class Counsel undertook this litigation on a contingent fee basis and, under the terms of the Class Settlement, may seek attorneys' fees in an amount up to 30% of the Settlement Sum, without opposition from the Kaiser-Related Entities. In addition, Class Counsel will seek reimbursement for out-of-pocket expenditures ("Class Counsel Costs"). The Court will determine the actual amount of the fees and costs awarded.

Class Counsel and counsel for the Defendants have designated a Settlement Administrator, to provide notice to the Settlement Class and administer the Settlement, including distributing Individual Settlement Awards. JND Legal Administration has been selected as the Settlement Administrator and approved by the Court. The maximum cost amount to administer the Settlement is \$27,000.

In class actions, the Court may provide the Named Plaintiff a "Service Award" in recognition of the time, effort, and risks the Named Plaintiff took to prosecute the case that is in addition to any individual settlement award. In this case, Class Counsel will apply for Michael Cuenca to receive a service award of up to \$75,000, subject to Court approval. The Court will determine the actual amount to be awarded. Any Court-awarded Service Award will be paid from the Settlement Sum.

12. YOUR LEGAL RIGHTS AND OPTIONS

OPTION A	Do Nothing	Stay in this Lawsuit, receive money allocated under the Settlement automatically as described in Sections 4 above and 12(a) below. Receive no enhancement.
OPTION B	Submit an Enhancement Claim Form Before __, 2021 [45 days after mailing Notice] and Receive an enhanced Individual Settlement Award, if determined eligible.	Stay in this Lawsuit, receive money for a Pay Claim Award allocated under the Settlement automatically, with 10% enhancement if you are determined to be eligible for a Promotion Claim Award based on your Enhancement Claim Form, as described in Sections 4 above and 12(b) below.
OPTION C	Request to be Excluded from the Settlement	Ask to be excluded from the monetary relief provisions of this Settlement (opt out) by __, 2021 [45 days after mailing Notice]. Receive no money from the Settlement Fund. Keep any rights you might have to file your own lawsuit for the same claims. See Section 12(c) below.
OPTION D	Object to the Terms of the Settlement	Unless you exclude yourself, you may file an objection that the Settlement is unfair or inadequate by __, 2021 [45 days after mailing Notice]. See Section 12(d) below.

OPTION A: DO NOTHING

You do not have to do anything to stay in the Lawsuit and receive money under the Settlement. If you do nothing, your award will be calculated automatically under the formula described in Section 4, above. You do not have to appear in court. You will also release your covered claims against the Kaiser-Related Entities and the Released Parties, unless you request to be excluded from the Settlement. If you are a current employee or become reemployed, you will receive the benefits of the business practices described in the Class Settlement. See Exhibit B to the Agreement for more information. The Court will hold the Final Approval Hearing (see Section 13 below) and you, as a Settlement Class Member, will be represented by Class Counsel at no cost.

OPTION B: SUBMIT AN ENHANCEMENT CLAIM FORM TO BE ELIGIBLE FOR AN ENHANCED INDIVIDUAL SETTLEMENT AWARD

A “Promotion Claim Award” will be available to Settlement Class Members who submit additional information regarding any alleged promotion denials via their Enhancement Claim Form, which is subject to review by the Settlement Administrator, based on information provided by the Settlement Class Member in the Enhancement Claim Form concerning any alleged promotion denials. In order to be eligible to receive this enhanced Individual Settlement Award from the Settlement Fund, you must complete the Enhancement Claim Form either online (at the Settlement Administrator’s website) or by mail using the form attached to this Notice, and return it to the Settlement Administrator postmarked or filed on-line by no later than __, 2021 [45 days after mailing Notice]. As indicated on the form, Enhancement Claim Forms can be mailed to: [insert address] or submitted online to [insert Settlement Administrator’s website.] If you are determined to be eligible for a Promotion Claim Award based on the information in your Enhancement Claim Form, you will receive a 10% enhancement on your automatic Individual Settlement Award. Whether or not you submit an Enhancement Claim Form, you will receive an automatic Individual Settlement Award under the Settlement as described in Sections 4 and 12(a) above, unless you request to be excluded from the Settlement, and all Released Claims

(defined in the Agreement) that you may have up through the date of March 31, 2021, against the Kaiser-Related Entities and all Released Parties (defined in the Agreement), will be barred by this Class Settlement.

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 statement that you are opting out (“Opt-Out Statement”) to the Settlement Administrator at: [address] or [email address]. The Opt-Out Statement must be physically signed by you, must contain your full name, address, and telephone number, must contain a written statement requesting to be excluded from this Settlement and that you do not wish to participate in the Settlement. **To be effective, your Opt-Out Statement must be postmarked or emailed no later than _____, 2021 [45 days after mailing Notice].** If you do not complete and timely mail a valid Opt-Out Statement, you will be bound by all terms and conditions of the Settlement, including its release of claims, and you will give up your rights to sue the Kaiser-Related Entities and the Released Parties on your own regarding the legal claims brought and released in this Action.

Alternatively, if you submit a timely and valid Opt-Out Statement, you will not receive any money from the Settlement, but you will retain the right to bring your own separate lawsuit. You also will not have the right to object to the Settlement or participate in the Final Approval Hearing.

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 12(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 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 *Cuenca v. Kaiser Entities*, and must contain a written statement of all grounds for your objection, and all facts or law supporting your objection, if any. **To be effective, your objection must be postmarked or emailed no later than _____, 2021 [45 days after mailing Notice].** Please do not telephone the Court or the Kaiser Entities’ counsel about the substance of objections. If you do not make and serve written objections within the time and in the manner 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 Class Settlement.

Even if you do not timely submit a written objection to the Settlement, you or your representative may still appear at the Final Approval Hearing to present to the court oral objections or concerns you may have with the Settlement so long as you provide written notice, which may be by email, to Class counsel and the Court at no later than 10:00 a.m. two days prior to the date of the Final Approval Hearing of your intent to appear at the Final Approval Hearing. If the hearing will be conducted remotely as a result of the Covid-19 pandemic, the Court will send you a responsive email with instructions regarding how to participate remotely. If you hire your own lawyer, you are responsible for paying for that lawyer.

You are not required to appear in Court. But if you intend to appear and speak, please follow the above instructions to send your Notice of Intention to Appear by mail or email to all of the following:

The Court:

Hon. [name]
Alameda County Superior Court
[address]
Oakland, California [zip]
[email]

Class Counsel:

Bryan Schwartz Law
180 Broadway, Suite 1380
Oakland, CA 94612
Tel: (510) 444-9300

Nichols Kaster, LLP
4700 IDS Center, 80 S. 8th St.
Minneapolis, MN 55402
Tel: 415-277-7235
Email: forms@nka.com

Defendants' Counsel:

GBG LLP
633 West 5th Street, Suite 3330
Los Angeles, CA 90071
Telephone: (213) 358-2814
heathermorgan@gbgllp.com; amandabolliger@gbgllp.com

If the Court rejects your objection, you will still be bound by the terms of the Settlement. You will not be able to exclude yourself from the Settlement.

13. NOTICE OF HEARING ON FINAL APPROVAL OF SETTLEMENT

The Court will hold a Fairness Hearing before the Honorable [JUDGE] on [DATE] at [TIME] in Department [NUMBER] of the Alameda County Superior Court, located at [ADDRESS], to determine whether the proposed Class Settlement is fair, reasonable, and adequate, and should be finally approved by the Court. At that time, the Court will also decide whether to approve Class Counsel's request for attorneys' fees and reimbursement of costs, and the Class Representative Service Awards. Class Counsel's motion for approval of attorneys' fees and reimbursement of costs must be filed by [DATE]. The Court may postpone the hearing without further notification to the Class. You may also wish to refer to the Court's website [insert] to review any instructions from the Court for the hearing due to COVID-19.

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

If the Settlement is not approved, the Lawsuit will continue to be prepared for a class certification hearing, trial, or other judicial resolution.

14. EXAMINATION OF PAPERS AND FREQUENTLY ASKED QUESTIONS

The foregoing is only a summary of the Lawsuit and the Class Settlement and does not purport to be comprehensive. For a more detailed statement of the matters involved in the Lawsuit and the Class Settlement, you may refer to the pleadings, the Agreement, and other papers filed in the Lawsuit. Key documents may be located on the case website at [SETTLEMENT ADMINISTRATOR'S website], or may be inspected at the Office of the Clerk of the Alameda County Superior Court, located at 1221 Oak Street, Oakland, CA 94612, during the Court's regular business hours of each court day (8:30 a.m. to 3:00 p.m.).

All inquiries by Settlement Class Members about the Class Settlement should be directed to the Settlement Administrator, [NAME, ADDRESS, PHONE, EMAIL] or you may contact Class Counsel, listed above in Section 12.

You may also consult [[SETTLEMENT ADMINISTRATOR'S website](#)] for court papers and answers to frequently asked questions.

PLEASE DO NOT TELEPHONE OR OTHERWISE WRITE THE KAISER-RELATED ENTITIES, DEFENDANTS' COUNSEL, THE CLERK OF THE COURT, OR THE JUDGE WITH INQUIRIES ABOUT THE CLASS SETTLEMENT.

Exhibit B

BUSINESS PRACTICE CHANGES

As described in the Class and PAGA Settlement Agreement and Release executed by the Parties, Defendants shall do the following:¹

A. Validated Job Analysis and Job Grouping

Defendants shall undertake the following with respect to jobs in the Administrative Support and Consulting Services job families that otherwise meet class jobs parameters— i.e., the Covered Jobs in Appendix 1. APTMetrics (or APT) will complete this work within one year after the Effective Date.

Defendants also shall undertake the following with respect to jobs in Named Plaintiff's current job family as listed in Appendix 1 ("Additional Covered Jobs"). APT will complete this work within three years after the Effective Date.

The parties have jointly selected APTMetrics, an independent industrial organizational psychology expert ("I/O expert"), to complete validated job analysis for the Covered Jobs and Additional Covered Jobs (collectively, the "Class-Covered Jobs"), in coordination with Defendants' industrial organizational psychologist and staff. APT's qualified project team will include racially diverse talent. APT's work will be paid for by Defendants.

APT's job analysis will include a determination of the knowledge, skills, and abilities required to perform the duties of the jobs studied. APT will also validate similarly situated job groupings and confirm the grouping of jobs of those performing substantially similar work.

B. Pay Practices

Defendants shall undertake the following with respect to Covered Jobs in two job families (Administrative Support and Consulting Services) and the Additional Covered Jobs as listed on Appendix 1 that otherwise meet class jobs parameters.

1. Monitoring Pay Equity

Beginning one year after the Effective Date and continuing for three annual pay equity cycles (ending four years after the Effective Date), Defendants shall retain an independent compensation expert, approved by the Parties, to analyze annually (1) base pay, (2) incentive pay, and (3) merit increase awards. The purpose of the annual studies is to help ensure that persons who perform substantially similar work are being paid equitably. Defendants shall pay for the work of this expert.

¹ While the types and scope of Defendants' personnel covered by these business changes varies to some extent depending on the topic at issue, in no event will any of Defendants' obligations described in this "Business Practice Changes" agreement cover physicians or HR personnel exclusively responsible for supporting physicians.

Based on results of its own job analysis work, as applicable, independent I/O expert APTMetrics will provide input into the compensation expert's statistical models used annually to analyze pay equity.

The independent compensation expert will complete the annual pay analysis at the direction of Defendants' counsel under attorney-client privilege. Defendants shall be required to report the results of that analysis to Class Counsel on an annual basis as part of ongoing confidential settlement communications.

2. Remediation for Pay Equity

If the pay equity analyses reveal that Latinx or Hispanic employees are underpaid in base pay, incentive pay, or merit increase awards, Defendants will remediate the pay (*i.e.*, adjust the base, incentive, or merit pay upwards, and also pay back pay if indicated). This remediation shall be completed within three months of the completion of each of the annual pay equity analyses.

On an annual basis, if remediation is needed, Defendants will share with Class Counsel a remediation plan describing the scope and amount of remediation, as well as the timeline for completing it, as part of ongoing confidential settlement communications.

Consistent with their current practices, if remediation is indicated for any employee, Defendants shall not ask or require that the employee execute a release of claims in order for his, her, or their compensation to be remediated. In no event will Defendants reduce the pay of any Class Member as a result of the pay equity analyses in order to equitize pay between employees who are substantially similar.

As part of the remediation process, Defendants shall continue to comply with all applicable laws regarding employees discussing or sharing their own pay information.

C. Promotion Practices

1. Enhanced Selection Process

Defendants shall undertake the following with respect to Covered Jobs in two job families (Administrative Support and Consulting Services) as listed on Appendix 1 and designated Additional Covered Jobs on Appendix 1 that, like Named Plaintiff's job, are being reclassified into a new Data Analytics function that otherwise meet class jobs parameters.

Within 18 months after the Effective Date, APTMetrics, the independent I/O expert selected by the parties and paid for by Defendants, shall:

a. Incorporate the validated qualifications (*e.g.*, minimum qualifications ("MQs"), or preferred qualifications ("PQs")) and competencies from the job analysis work into job descriptions and promotion selection criteria.

b. Develop training for managers in the use of validated selection criteria for

selection decisions.

c. Provide, or guide the development of, improved tools/templates for use in making selection decisions (e.g., structured interview guides).

2. Monitoring

Defendants shall also undertake the following for all Covered Jobs and all Additional Covered Jobs as listed on Appendix 1 that otherwise meet class jobs parameters. Beginning one year after the Effective Date and continuing for three annual cycles (ending four years after the Effective Date), the outside compensation expert agreed to by the Parties shall conduct annual monitoring of Defendants' promotion data for disparate impact and to ensure that open jobs have been posted consistent with Defendants' posting policy under the attorney-client privilege. This work will be paid for by Defendants. If any impact is indicated, Defendants shall undertake further privileged drill down/spot audits to determine any potential root causes (e.g., specific decisionmakers or pockets of the organization).

The results of this promotion monitoring will be reported to Class Counsel on an annual basis as part of the ongoing confidential settlement communications.

Defendants also will continue workforce equity analytics and auditing efforts for the next three years (e.g., workforce equity action planning designed to promote equitable opportunities for underrepresented talent by assessing and updating workforce practices to mitigate against potential bias, consulting on equitable practices, etc.).

3. Additional Training

In addition, within 18 months after the Effective Date, APTMetrics shall develop and provide guidance for managers on best practices for making job-related promotion selection decisions designed to help ensure that candidates for all Covered Jobs and Additional Covered Jobs are screened in a consistent and nonbiased manner.

D. Career Development

Defendants shall undertake the following with respect to Covered Jobs in two job families (Administrative Support and Consulting Services) as listed on Appendix 1 and designated Additional Covered Jobs on Appendix 1 that, like Named Plaintiff's job, are being reclassified into a new Data Analytics function that otherwise meet class jobs parameters.

1. Career Progression

In order to help employees be able to understand what they need to learn and/or do in order to move to the next level, as well as what next level roles are possible avenues for promotion, APTMetrics, the independent I/O expert selected by the parties and paid for by Defendants, shall use the job analysis to identify career tracks and develop career guides. Such

work shall include:

- Overview of roles and similarities/differences in competencies and competency proficiencies, goals, and responsibilities.
- Likely roles to be promoted to-from within/across the related job families and role entry requirements.
- Developmental recommendations (incorporating information outlined below) and formal development steps, if appropriate (e.g., licenses, training).
- Real employee interviews/life stories detailing compelling career journeys across the roles, highlighting specific opportunities and challenges.

Defendants shall implement improved processes within 18 months after the Effective Date.

2. Developmental Resources

APTMetrics shall also provide input and consult on the creation of developmental resource guides for certain Covered Jobs and Additional Covered Jobs, to be determined after the job analysis is completed. This work shall include using job analysis output and working with subject matter experts (SMEs) to identify resources (e.g., books, videos, training programs, articles) and experiences (e.g., supervisor-provided, conferences, stretch assignments) that facilitate the development of skills for movement into identified jobs.

For the same purpose, APTMetrics shall also identify the appropriate materials and teachings (in light of the information learned from the job analysis) within Defendants' existing KP Learn training/education offerings.

Defendants shall pay for this work. Defendants shall implement improved processes within 18 months after the Effective Date.

E. Manager Development

Defendants shall undertake the following for management-level employees in Covered Jobs and Additional Covered Jobs that otherwise meet class job parameters.

1. Leadership Development and Assessment

APTMetrics shall review and provide expert guidance on leadership development and building a diverse bench, including ways to facilitate managers' understanding of and demonstrated capacity to consistently apply diversity, equity, and inclusion ("DEI") practices. In particular, Defendants will consult with Keith Caver, the Vice President of Leadership Assessment and Development for APTMetrics. Mr. Caver is a recognized leader on organizational effectiveness, including talent management, executive coaching, innovation, diversity, change leadership, and cultural transformation. See <https://aptmetrics.com/wp-content/uploads/2018/11/BIO-Keith-Caver-June-2015.pdf>.

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

2. Mentorship Programs Supporting Latinx or Hispanic Managers

APTMetrics will review existing mentorship programs designed to support managers from historically underrepresented groups, including Latinx or Hispanic employees in the Covered Jobs and Additional Covered Jobs. Defendants will maintain and/or evaluate for improvement such mentorship programs based on feedback from APTMetrics through the three-year implementation of the Settlement.

3. Reporting

Defendants shall report to Class Counsel annually on the progress of all of this Career Development work as part of ongoing confidential settlement communications as part of the Reporting described in Section H below.

F. Personnel Processes Training

Within one year after the Effective Date, Defendants shall undertake the following with respect to Covered Jobs and Additional Covered Jobs that otherwise meet class jobs parameters:

1. In consultation with APTMetrics, Defendants will update trainings that are required or available on relevant personnel topics, such as: (a) pay practices/decisions; (b) candidate screening and selection decisions; and (c) anti-harassment, equal employment opportunity (EEO), and unconscious bias.

2. Defendants shall develop and provide “in-application support” (*e.g.*, automatic prompts to ensure guardrails for equity are observed) in the Taleo applicant software program and salary offer tool that will support legally compliant and equitable practices and direct recruiters and managers to embedded guidance materials at particular steps of a process.

3. APTMetrics will provide guidance on training managers on their accountability to established decision-making criteria.

4. APTMetrics shall advise for Defendants’ consideration whether compensation training can be made more effective and, if so, how.

Class Counsel will receive annual reporting on progress on these programs as part of ongoing confidential settlement communications.

G. Diversity, Equity & Inclusion

The following additional actions have been or will be implemented:

1. **Work with NeuroLeadership Institute (NLI)** (see <https://neuroleadership.com>):

a. Inclusive mindsets training: to develop and implement science-based learning tools designed to inspire and embed inclusive mindsets and habits with anecdotes tailored to different workforces. (This is work pioneered by Carol Dweck of Stanford University on implicit theories of intelligence and how mindsets influence motivation and success.) This will also involve participatory learning, through short videos followed by participant guides focused on how to be more inclusive.

b. Training for members of Talent Acquisition: on avoiding bias in candidate screening/selection. Assessments shall be conducted of the efficacy of this training by evaluating participants' understandings during the training and at a follow-up at least 90 days after the training is completed.

c. Co-host with NLI: a three-part "Advancing Workforce Equity" Virtual Series. This virtual series will be mandatory for all National Equity Inclusion & Diversity ("NEID") employees and Human Resources Vice-Presidents, Director Human Resources Business Partners, Human Resources Business Partners, and Human Resources Consultants in California not on an approved leave to complete within one year after the Effective Date and includes:

- Part 1: The Science of Inclusion
- Part 2: How Mitigating Bias and Growth Mindset Impacts Our Workforce
- Part 3: Grow Together

d. Provide a Leader Toolkit: on racial equity and social justice actions and resources to managers across the organization.

Class Counsel will receive annual reporting on progress on these above-listed programs as part of ongoing confidential settlement communications, and the NLI 3-part series will be shared with Class Counsel.

2. **Upstander Intervention Training**

All NEID employees and Human Resources Vice-Presidents, Director Human Resources Business Partners, Human Resources Business Partners, and Human Resources Consultants in California not on an approved leave will be required to complete upstander intervention training within one year after the Effective Date. Defendants shall also make available upstander intervention course training to all of Defendants' California non-union employees, along with multiple messages to the workforce about the availability and value of such training. This training will also be offered as a session at the annual Diversity Conference.

Assessments shall be conducted of the efficacy of the above training in this Section (G.2) by evaluating participants' understandings during the training and at a follow-up at least 90 days

after the training is completed. Class Counsel will receive annual reporting on progress on these programs as part of ongoing confidential settlement communications.

Within one year of the Effective Date, Defendants also agree to make available to their workforces for recommended further reading *Prejudice: The Target's Perspective*, by Janet K. Swim and Charles Stangor, an article by or about the diversity and inclusion teachings of independent diversity expert Kenji Yoshino, and Sam Finch's article, "9 Phrases Allies Can Say When Called Out Instead of Getting Defensive."

Class Counsel will receive annual reporting on progress on these programs as part of ongoing confidential settlement communications.

3. "Belong@KP" campaign

Defendants have implemented or will implement a holistic, leader-endorsed initiative to promote workplace equity and inclusion called Belong@KP. The program is launching with a 2021 goal of 75 percent participation by employees who are managers of people. This research-based program addresses understanding and breaking bias through everyday behavior changes and concludes with the foundational methods of uprooting and dismantling racism and oppression. It will include virtual instructor-led workshops, team-based learning, communication messaging, discussion and application tools. The training and tools will include:

- Inclusive behaviors to bring out the best in our people
- Respecting every voice
- Identifying and offsetting bias
- Feeling safe to bring your "whole self" to work (authenticity)
- Speaking up without fear
- Racial equity and social justice action

The program includes objective measurements to determine impact of this program, which shall be reported to Class Counsel, as part of ongoing confidential settlement communications.

H. Public Statements

Internal statements have been or will be issued from senior leadership that: (1) acknowledge societal racism can cause health issues to the public at large as well as to the health and well-being of Defendants' staff, patients, and communities served, and that for this and other reasons building a workplace culture that is diverse, equitable, inclusive, and anti-racist has been and will continue to be an important priority; and (2) support Black Lives Matter and related social crisis discussions and resources advancing racial equity.

The Kaiser Permanente Internet home page will be enhanced with public statements of company identity to include its commitment to employee diversity and inclusion as follows:

Because health isn't an industry. It's a cause.

Kaiser Permanente was founded on the radically simple idea that everyone deserves the chance to live a healthy life. That's why you can find high-quality care and coverage in one place.

As a member, you're at the center of everything we do — from pioneering new ways to treat cancer to building useful tools that make it easier to stay on top of your health. Kaiser Permanente's world-class professional staff, who proudly reflect and embrace the diversity of our surrounding community, is here for you. At Kaiser Permanente, we strive to eradicate racial disparities in health outcomes and within our organizations. We thrive by making healthcare delivery equitable and inclusive for all stakeholders.

I. Investigations

From the Effective Date and for three years after, Defendant Kaiser Foundation Health Plan ("KFHP") will increase and maintain EEO investigation unit staffing to total at least fifteen (15) investigators (employees and/or outsourced external investigators). Investigators in the EEO unit will participate in a more in-depth de-biasing training (to be agreed to by the parties) than is offered generally to the organization. In addition, every EEO unit investigator employed by KFHP will be encouraged to read *White Fragility* by Robin DiAngelo, and will have available to them for recommended reading on the internal Intranet *How To Be An Antiracist* by Ibram X. Kendi, *Biased: Uncovering the Hidden Prejudice That Shapes What We See, Think, and Do* by Jennifer L. Eberhardt, *Prejudice: The Target's Perspective*, by Janet K. Swim and Charles Stangor, an article by or about Kenji Yoshino's D&I-related teachings, and Sam Finch's article, "9 Phrases Allies Can Say When Called Out Instead of Getting Defensive."

Class Counsel will receive annual reporting on progress on these programs as part of ongoing confidential settlement communications.

J. Complaint Audit

Beginning one year after the Effective Date and continuing for three years, Class Counsel will receive annual reporting on progress on the below programs as part of ongoing confidential settlement communications:

1. EEO Complaint Logs

On an annual basis, Vice President Todd Trotter (or his delegees) will conduct an annual audit of EEO complaint logs for trends and potential repeat issues with certain managers or within certain parts of the organization. Mr. Trotter will share the results of the audit with KFHP's Chief Human Resources Officer to consider appropriate remediation efforts, if any. The audit will be conducted, and remediation guided, by KFHP's legal counsel, under privilege.

2. Race Discrimination Complaints of Latinx/Hispanic Employees

On an annual basis, Vice President Todd Trotter (or his delegees) will examine EEO

internal complaints of race discrimination by Latinx/Hispanic employees and report on the nature of the complaint (*e.g.*, promotion denial), the Region and employing entity, whether the complaint was found to be substantiated or unsubstantiated, and the comparative rates of complaints and substantiation for White complainants alleging EEO matters. If the data reveal a pattern of negative personnel decisions with respect to persons in a protected class, Defendants will take corrective action with the relevant manager(s). This information will be provided to Class Counsel on an annual basis as part of ongoing confidential settlement communications.

K. Compliance

Beginning one year after the Effective Date and continuing for three years, the following semi-annual compliance process and reporting shall take place:

1. Internal Accountability

Derek Sumimoto, Director of HR Compliance Risk Management will be the internally-designated Compliance Monitor responsible for ensuring timely implementation of all aspects of the previously described Changes in Business Practices, as well as the external reporting described below.

2. Reporting to Class Counsel

Class counsel will receive semi-annual written reports from the Compliance Monitor summarizing Defendants' progress on implementing and/or completing each term of the Business Changes described herein as part of ongoing confidential settlement communications ("Compliance Monitor's Compliance Report"). The reporting will include the results of the independent data analyses, as well as a summary of instances, if any, where APTMetrics made a recommendation with which Defendants disagreed and declined to adopt, and the reasons for that decision. They shall be shared with Class Counsel at least 2 weeks prior to each semi-annual Compliance meeting.

3. Regular Compliance Meetings

Class Counsel, Defendants' Counsel, and representative(s) of APTMetrics, will meet semi-annually to discuss the reports and audits. Other individuals from Defendants may attend if agreed to by the parties. In addition, if the parties agree in advance of a meeting, they together may determine that APTMetrics is not required to attend a meeting.

4. Recordkeeping

The Parties agree that any and all analyses and reporting that are shared with Class Counsel pursuant to the previously described changes in business practice will be considered a confidential settlement communication. Class Counsel further agree that they will not share any such analyses or reporting with any persons. Nevertheless, nothing in the agreement is intended to make confidential any data or report that Defendants are required to maintain, disclose, submit, or make available to any employee, member of the public, or any public agency. Defendants agree to maintain records of documents and data generated pursuant to this

agreement consistent with existing business retention policies.

5. Supplementation of Actions Required By Law

The Parties agree that the terms and programs described herein are intended to supplement rather than supplant Defendants' obligations under applicable state or federal laws.

Exhibit C

CONFIDENTIAL ENHANCEMENT CLAIM FORM

CUENCA, ET. AL., v KAISER FOUNDATION HEALTH PLAN, INC., KAISER FOUNDATION HOSPITALS, THE PERMANENTE MEDICAL GROUP, INC., and SOUTHERN CALIFORNIA MEDICAL GROUP

IMPORTANT: You are receiving this Enhancement Claim Form because the records of Kaiser Foundation Health Plan, Inc. (“KFHP”), Kaiser Foundation Hospitals (“KFH”), The Permanente Medical Group, Inc. (“TPMG”), and/or Southern California Medical Group (“SCPMG”) (collectively, “Kaiser-Related Entities”), which are Defendants in the above-referenced action, indicate that you are a member of the Settlement Class as those terms are defined in the Notice you received along with this Enhancement Claim Form. This is not a lawsuit against you. You will be eligible to receive a recovery under this Settlement even if you do not return this form. However, if you believe you were denied a promotion, you may be entitled to an enhanced settlement allocation, if you submit this form. Please read this form carefully and return it if you wish to receive an enhancement on your settlement recovery.

Your Enhancement Claim Form must be returned via ONLINE submission, at www.____.com, or POSTMARKED by no later than [DATE] to be considered. Enclosed is a self-addressed envelope for returning the Enhancement Claim Form by mail.

ENHANCEMENT CLAIM FORM INSTRUCTIONS

1. You will be eligible to automatically receive an Individual Settlement Award based on the formula described in the accompanying Notice and do not need to submit this form to receive that payment. However, you may be eligible to receive an *additional monetary award* (“enhancement”) if you believe you were denied a promotion at any point between June 17, 2016, and March 31, 2021.
2. In order to receive an enhanced settlement award, you must return this Enhancement Claim Form postmarked or emailed by [DATE] to:

Mail: [ADMINISTRATOR ADDRESS]

or

Email: [email address]

NEED ASSISTANCE? If you need assistance completing your Enhancement Claim Form, you can get free help by contacting Class Counsel via email at forms@nka.com or by telephone: 415-277-7235 (Nichols Kaster, LLP) or 888-891-8489 (Bryan Schwartz Law)

ENHANCEMENT CLAIM REQUEST (to be completed by you)

A. PERSONAL INFORMATION (Required)

Name (First, Middle, Last)

Street Address Apartment Number

City State Zip Code

Social Security Number

Please list any other name you used while employed at any Kaiser-Related Entities and the dates when you used each name:

Name Date Range

Name Date Range

Best phone number and time to reach you: _____

Check the following box to confirm that you are Latinx/Hispanic: ☐

B. PROMOTION INFORMATION (Required)

Do you believe that you were denied or dissuaded from applying for a promotion to a KFH, KFHP, TPMG and/or SCPMG job between June 17, 2016 and March 31, 2021?

☐ Yes

☐ No

C. SIGNATURE AND DECLARATION OF CLASS MEMBER (Required)

I, _____, declare under penalty of perjury that the information and facts I have stated in this Enhancement Claim Form are true and accurate to the best of my knowledge.

Date: _____

Signature of Class Member

Exhibit D

<<return address>>

<<Name>>

<<Address>>

<<City>>,<<State>>

<<Zipcode>>

Court-Ordered Class Action Notice Inside

**You could receive money and your rights could be affected by a Class Action
Settlement in *Cuenca v. Kaiser Foundation Health Plan, Inc., et al.***

<<return address>>

Court-Ordered Class Action Notice Inside

You could receive money and your rights could be affected by a Class Action Settlement in *Cuenca v. Kaiser Foundation Health Plan, Inc., et al.*

Exhibit E

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*pro hac vice application forthcoming

*Attorneys for Plaintiff Michael Cuenca
and the Putative Class*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA – UNLIMITED JURISDICTION

MICHAEL CUENCA, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

KAISER FOUNDATION HEALTH PLAN,
INC., KAISER FOUNDATION HOSPITALS,

Case No.: RG20065123

**[PROPOSED] ORDER (1) GRANTING
PRELIMINARY APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT; (2) PRELIMINARILY
CERTIFYING SETTLEMENT CLASSES;
(3) APPOINTING CLASS COUNSEL; (4)
APPROVING NOTICE PLAN AND**

1 THE PERMANENTE MEDICAL GROUP,
2 INC., and SOUTHERN CALIFORNIA
3 PERMANENTE MEDICAL GROUP; and
4 DOES 1 THROUGH 50, INCLUSIVE,

Defendants.

**DIRECTING DISTRIBUTION OF NOTICE;
AND (5) SETTING A SCHEDULE FOR
THE FINAL APPROVAL PROCESS**

Complaint filed: June 17, 2020

1 Plaintiff MICHAEL CUENCA (“Plaintiff” or “Named Plaintiff”) in the above-captioned
2 action has alleged, on behalf of himself and a putative class of similarly situated individuals, unequal
3 pay and race and national origin-based pay and promotion discrimination by Defendants KAISER
4 FOUNDATION HEALTH PLAN, INC., KAISER FOUNDATION HOSPITALS, THE
5 PERMANENTE MEDICAL GROUP, INC., and SOUTHERN CALIFORNIA PERMANENTE
6 MEDICAL GROUP (“Defendants”) against certain of their California-based Hispanic/Latinx
7 employees. The Second Amended Complaint makes these class claims for alleged: (1) violation of the
8 California Equal Pay Act (“EPA,” Labor Code §§1197.5, 1194.5); (2) violation of the Fair
9 Employment and Housing Act (“FEHA,” Cal. Gov’t Code §12940 et seq.) – race- and national origin-
10 based discrimination; (3) violation of Title VII (42 U.S.C. §2000e, et seq.) – race- and nation origin-
11 based discrimination; (4) violation of Section 1981 – race discrimination (42 U.S.C. §1981 et seq.);
12 (5) violation of FEHA (Cal. Gov’t Code §12940 et seq.) – failure to prevent race- and National origin-
13 based discrimination; (9) Declaratory Judgment (C.C.P. §1060 et seq.); and (10) Penalties under the
14 Labor Code Private Attorneys General Act (Labor Code §§2698-2699.5) (the “Action”). Defendants
15 have denied these allegations.

16 The parties entered into negotiations for the purpose of settling their disputes underlying
17 the Action. Those negotiations have been successful. Plaintiff and Defendants (“Parties”) have agreed
18 to the entry of a proposed Class and PAGA Settlement Agreement and Release (the “Settlement”) as
19 a full settlement of those disputes and this legal action, subject to this Court’s final approval thereof.
20 On April 23, 2021, Plaintiff filed that Settlement, along with this proposed Order. A copy of the
21 proposed Settlement is attached as Exhibit 1 to this Order. Notwithstanding Defendants’ stipulation
22 to “Settlement Class” in this case and to the proposed Settlement, Defendants continue to deny all
23 allegations of unlawful conduct contained in Plaintiff’s Second Amended Complaint and prior
24 Complaints, and do not admit or concede that they have, in any manner, violated federal or California
25 laws prohibiting discrimination and/or retaliation, or committed any other unlawful action that would
26 entitle Plaintiffs or any class to any recovery.

27 Plaintiff and Defendants have agreed that, for purposes of settling this case only, it should
28 proceed as a class action as described below in order that this Settlement will constitute a final and

complete adjudication of the parties' and Class Members' rights, liabilities and obligations as set forth in the Settlement. Specifically, Plaintiff has presented to the Court an unopposed Motion for an Order: (1) preliminarily approving the proposed Settlement Agreement and the class and representative action settlement it embodies; (2) preliminarily certifying the proposed Settlement Class and appointing Michael Cuenca as Class Representative; (3) appointing Plaintiff's Counsel as Class Counsel; (4) approving the proposed Notice plan and directing distribution of the proposed class Notice and related documents; and (5) setting a schedule for final approval; the accompanying memorandum in support; the declarations of counsel in support thereof. The Court has considered this Motion, the arguments of counsel, and the pleadings and filings in this action. Based on this consideration and in the interest of justice, the Court hereby FINDS, CONCLUDES, and ORDERS as follows:

I. PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS

For settlement purposes only, the Parties have proposed preliminary certification of the following Settlement Class: Hispanic/Latino individuals who meet the following parameters at any time between June 17, 2016, and March 31, 2021 (the "Settlement Class" and the "Class Period"):

- a) employed in any of the following California Regions – NCAL, SCAL, California locations of Program Offices, and California locations of the KP-IT Region;
- b) employed full-time by any of the following California Entities – Kaiser Foundation Hospitals, Kaiser Foundation Health Plan, The Permanente Medical Group, and Southern California Permanente Medical Group;
- c) employed as exempt or non-exempt employees;
- d) employed in full-time, non-union, director-level and below, and non-clinical jobs only; and
- e) employed in either the Administrative Support or Consulting Services job families in any of the "Covered Jobs" listed in Exhibit 1 to the Second Amended Complaint or in any of the "Additional Covered Jobs" listed in Exhibit 1 to the Second Amended Complaint;

Having considered the proposed Settlement Class pursuant to California Code of Civil Procedure § 382, this Court hereby FINDS and CONCLUDES that the proposed Settlement Class satisfies the requirements of California law for class certification:

(a) A class is “ascertainable if it identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself as having a right to recover.” *Harper v. 24 Hour Fitness, Inc.* (2008) 167 Cal.App.4th 966, 977. Here, based on the stipulation of the Parties and materials provided with the unopposed Motion, the Settlement Class definition precisely defines who is entitled to class relief based on their employer, dates of work, organizational assignment, jobs/job codes, exempt/non-exempt status, and demographics. The proposed Settlement Class consist of over 2,560 individuals in total. Thus, the Settlement Class is sufficiently numerous.

(b) The commonality requirement is met if there are questions of law or fact common to the class. *Williams v. Sup. Ct.* (2013) 221 Cal.App.4th 1353, 1369 (a single common question can create commonality). When determining commonality, “the focus must be on the policy the plaintiffs are challenging and whether the legality of that policy can be resolved on a class-wide basis.” *ABM Indus. Overtime Cases* (2017) 19 Cal.App.5th 277. Here, based on the stipulation of the Parties and the materials provided with the unopposed Motion, the Court finds that there are questions of law or fact that are common to the Settlement Class, and that these common issues predominate over any individualized questions of law or fact. Such questions include whether Defendants maintained policies depriving their Hispanic/Latinx employees equal pay, discriminating against them on the basis of race and/or national origin with regard to pay and/or promotions, and related claims. The injunctive and monetary relief in the Settlement resolves these common issues on a class-wide basis.

1 (c) To satisfy the typicality requirement, the claims of the representative plaintiff(s)
2 must “possess the same interest and suffer the same injury as the class members.”
3 *J.P. Morgan & Co. Ins. v. Sup. Ct.* (2003) 113 Cal.App.4th 195, 212; *Caro v.*
4 *Proctor & Gamble Co.* (1993) 18 Cal.App.4th 644, 663-664. “[I]t has never been
5 the law in California that the class representative must have *identical* interests with
6 the class members.... The only requirements are that common questions of law and
7 fact *predominate* and that the class representative be *similarly* situated.” *Classen*
8 *v. Weller* (1983) 145 Cal.App.3d 27, 46-47 (emphasis in original). Based on the
9 stipulation of the Parties and the materials provided with the unopposed Motion,
10 the Court finds that the unequal pay and race- and national-based pay and
11 promotion discrimination claims and failure to prevent such discrimination claims
12 raised in Plaintiff’s Second Amended Complaint are susceptible to common proof.
13 Plaintiff was a Hispanic/Latinx employee of Defendants during the specified time
14 and his claims arise out of the same policies, practices, and concerns alleged on
15 behalf of all Class Members. Accordingly, he is typical of the Settlement Class.
16 *See Torchia v. W.W. Grainger, Inc.* (E.D. Cal. 2014) 304 F.R.D. 256.

17 (d) The adequacy requirement is met if: (1) the named representative is represented by
18 counsel qualified to conduct the pending litigation; and (2) the named
19 representatives’ interests are not antagonistic to those of the Settlement Class. *See*
20 *Richmond v. Dart Indus. Inc.* (1981) 29 Cal.3d 462, 470. Named Plaintiff retained
21 counsel experienced in class litigation, who have shown their commitment to
22 litigating the case vigorously on behalf of the Settlement Class. Second, based on
23 the stipulation of the Parties and the materials provided with the unopposed
24 Motion, the Court finds that the Named Plaintiff is adequate, having been informed
25 and accepted the responsibility of performing the fiduciary duties which class
26 representatives owe the members of the class, and that Plaintiff has no apparent
27 conflicts with the Settlement Class Members. *Id.*

1 (e) The test for determining predominance of common issues is whether the proposed
2 class is sufficiently cohesive to warrant class-wide adjudication. *Jimenez-Sanchez*
3 *v. Dark Horse Express, Inc.* (2019) 32 Cal.App.5th 224, 233-34. Based on the
4 stipulation of the Parties and the materials provided with the unopposed Motion,
5 the Court finds that the proposed Settlement Class is cohesive because Class
6 Members share a common nucleus of facts and potential legal remedies.

7 (f) Further, class resolution is superior to other methods of adjudication. *See Dunk v.*
8 *Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 n.19. Here, based on the
9 stipulation of the Parties and the materials provided with the unopposed Motion,
10 resolving the common liability and damages issues in a single action would be
11 more efficient than litigating hundreds of individual claims in separate actions in
12 separate courts. *See Sav-On Drug Stores, Inc. v. Sup. Ct.* (2004) 34 Cal.4th 319,
13 340. In addition, litigation costs would likely exceed potential recovery if each
14 Class Member litigated individually. Accordingly, the superiority requirement is
15 satisfied.

16 Accordingly, and based on these findings and the stipulations that underlie them, the Court
17 hereby preliminarily CERTIFIES the Settlement Class and appoints Michael Cuenca as Class
18 Representative. Should this Court or any reviewing court on appeal refuse to approve this Settlement
19 or require modifications to this Settlement, the Settlement and the stipulations on which it is based
20 shall be null and void, inadmissible, and unusable in any future proceeding and shall not be considered
21 a binding settlement agreement, unless Plaintiff and Defendants each expressly and voluntarily
22 approve in writing any such modification by this Court or the reviewing court.

23 **II. APPOINTMENT OF CLASS COUNSEL**

24 The Court finds that Bryan Schwartz, Jennifer Reich, and Samuel Goldsmith of Bryan
25 Schwartz Law and Robert Schug, Matthew Helland, and Neil Pederson of Nichols Kaster have
26 extensive experience in prosecuting employment discrimination class actions and employment
27 discrimination cases. The Court appoints these firms as Class Counsel.

1 **III. PRELIMINARY APPROVAL OF CLASS AND PAGA REPRESENTATIVE**
2 **ACTION SETTLEMENT**

3 The Court has reviewed the terms of the proposed Settlement Agreement attached as Exhibit
4 1, including specifically the injunctive and monetary relief provisions. The Court also reviewed the
5 Motion papers and declarations of counsel, which describe Class Counsel's legal and factual
6 investigation, and the settlement process. Based on review of those papers, the Court concludes that
7 the Settlement is the result of extensive, arm's length negotiations among the Parties after Class
8 Counsel investigated the class claims and became familiar with the strengths and weaknesses of the
9 case. The Court finds that the settlement process was non-collusive. Based on the Court's review of
10 papers submitted in support of preliminary approval, the Court concludes that the Settlement
11 Agreement has no obvious defects and appears to be, preliminarily, within the range of a fair and
12 reasonable settlement of the case such that notice to the Settlement Class is appropriate pursuant to
13 Rule 3.769 of the California Rules of Court.

14 It is therefore ORDERED that:

- 15 (a) The Settlement Agreement and the class action settlement it embodies is hereby
16 PRELIMINARILY APPROVED. Final approval of the Settlement is subject to
17 consideration of any objections of members of the Settlement Class to the proposed
18 Settlement.
19 (b) Pending final determination of the fairness of the Settlement, all further litigation
20 of this action not related to the settlement approval process is hereby STAYED.

21 **IV. APPROVAL OF THE NOTICE PLAN AND DISTRIBUTION OF NOTICE**

22 The Parties have submitted for this Court's approval a proposed Notice of Settlement of Class
23 Action (the "Notice"). The Court has carefully reviewed that Notice, the related provisions in the
24 proposed Settlement Agreement, and the Memorandum in Support of Plaintiff's Unopposed Motion
25 for Preliminary Approval. The Court FINDS and CONCLUDES as follows:

- 26 a) The proposed Notice allows Class Members a full and fair opportunity to consider the
27 proposed Settlement and Class Counsel's motion for attorneys' fees and costs, which will
28

1 be filed at least thirty (30) days before the deadline for Class Members to opt out or object
2 to the Settlement.

3 b) The proposed plan for distributing the Notice is a reasonable method to inform Class
4 Members of the terms of the Settlement, how to obtain additional information about the
5 Settlement, how to object to or comment on the Settlement or motion for attorney's fees
6 and costs, and how to opt out of the monetary relief provisions of the Settlement by filing
7 an Opt-Out Statement. Class Members are included in the Settlement Class unless they
8 timely mail a written Opt-Out Statement to the Settlement Administrator.

9 c) The Parties have designated JND Legal Administration as the Settlement Administrator.
10 Under the proposed Settlement Agreement, after receiving information about the Class
11 Members from Defendants, the Settlement Administrator will run the list of Class
12 Members through the United States Postal Service's National Change of address database
13 before mailing the Notice via firstclass U.S. mail and skip-tracing any returned Notices.

14 The Court FINDS and CONCLUDES that the proposed plan for distributing the Notice satisfies the
15 notice requirements and all other legal and due process requirements. The Court finds that in the
16 present case, mailed and emailed notice is the best practicable method of notice that is reasonably
17 calculated to apprise Class Members of the Settlement Agreement and their rights. The Court also
18 finds that the proposed Notice is sufficient to inform Class Members of the terms of the Settlement,
19 their rights under the Settlement, including, but not limited to, their right to opt out of the Settlement,
20 object to the Settlement and/or participate in the Settlement, and the processes for doing so; and the
21 date and location of the final approval hearing.

22 Accordingly, the Court hereby ORDERS as follows:

- 23 a) The form and content of the proposed Notice is approved;
- 24 b) The manner of distributing the Notice and updating Class Member addresses through the
25 National Change of Address database and skip-tracing any returned notices, is approved;
- 26 c) JND Legal Administration is approved as the Settlement Administrator;
- 27 d) Within five (5) days after the date of this Order, Defendants shall provide to the Settlement
28

1 Administrator a list of all Class Members, including the full name, social security number,
2 last known home address, personal email address and telephone number(s) (if known),
3 weeks worked in a Class-Covered Position during the Class Period, exempt or non-exempt
4 status for each week worked in a Class-Covered Position during the Class Period, and base
5 annual salary rates for each week worked in a Class-Covered Job during the Class Period,
6 in a format reasonably acceptable to the Settlement Administrator. The Settlement
7 Administrator shall mail and email the Notice to each Class Member's last known
8 residential address and personal email address (if known or reasonably available) within
9 15 days of receipt of the Class Member information, as set forth in the Settlement
10 Agreement attached as Exhibit 1; and

- 11 e) The Parties are further directed to carry out and comply with the terms of the Settlement
12 Agreement, particularly with respect to providing the Settlement Administrator the
13 information and data necessary to carry out its duties.

14 **V. PROCEDURES FOR FINAL APPROVAL OF THE SETTLEMENT**

15 Motion for Final Approval and Final Approval Hearing

16 The Court hereby schedules a hearing ("the Final Approval Hearing") for [month/day], 2021,
17 at [time] p.m. to determine whether to grant final certification of the Settlement Class, to consider any
18 objections that may be filed and to determine whether the Settlement is fair, reasonable and adequate
19 and should be finally approved, and to determine the amount of attorneys' fees, costs, and expenses
20 to be paid to Class Counsel. Class Counsel shall file a Motion for Final Approval of the Settlement
21 Agreement no later than fifteen (15) days prior to the end of the Notice Period, with any reply briefing
22 in support of Final Approval to be filed one week after the close of the Notice Period. The Parties
23 may file written responses to any objections no later than seven (7) days prior to the Final Approval
24 Hearing.

25 Any Class Member may appear at the Final Approval Hearing in person, or through their own
26 attorney, to show cause why the Court should not approve the Settlement, or to object to the motion
27 for the award of the Named Plaintiff's Service Award and Class Counsel's Attorneys' Fees and/or
28

1 Class Counsel's Costs, but the Class Member, and any attorney representing the Class Member, must
2 file a Notice of Appearance with the Court and serve the same on Class Counsel and counsel for
3 Defendants, no later than forty-five (45) days after the first mailing of the Notice.

4 The Court reserves the right to continue the date of the Final Approval Hearing without further
5 notice to Class Members.

6 Deadline for Motion for Attorneys' Fees and Costs and Service Award

7 All memoranda, affidavits, declarations, and other evidence in support of the request for Class
8 Counsel's costs and attorneys' fees and the Named Plaintiff's request for service award shall be filed
9 at least thirty (30) days before the end of the Notice Period. Class Counsel may file a supplemental
10 memorandum in support of the motion no later than seven (7) court days before the Final Approval
11 Hearing.

12 Deadline for Class Members to Opt Out or File Objections

13 Any opt-outs from the monetary relief portion of the Settlement ("Opt-Out Statements"),
14 rescissions of Opt-Out Statements, or Objections to the Settlement, proposed Settlement Agreement,
15 and/or motion for attorneys' fees and costs must be postmarked or emailed to the Settlement
16 Administrator no later than 45 days from the date the first Notice is mailed ("Notice Period"), pursuant
17 to the procedures set forth in the Settlement Agreement and Notice. Class Counsel will file all
18 Objections with the Court within five (5) days after the end of the Notice Period. The Settlement
19 Administrator will file all Opt-Out Statements and rescissions of Opt-Out Statements with the Court
20 no later than five (5) days before the Final Approval Hearing.

21 IT IS SO ORDERED.
22

23
24 DATED _____

JUDGE

Exhibit F

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2 AMANDA BOLLIGER (SB# 250292)
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7 Attorneys for Defendants
KAISER FOUNDATION HOSPITALS;
8 KAISER FOUNDATION HEALTH PLAN, INC.;
and THE PERMANENTE MEDICAL GROUP, INC.

9 [additional counsel listed on the next page]

10
11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 IN AND FOR THE COUNTY OF ALAMEDA
14

15 MICHAEL CUENCA, individually and on
behalf of all others similarly situated,

16 Plaintiff,

17 vs.

18 KAISER FOUNDATION HOSPITALS;
19 KAISER FOUNDATION HEALTH PLAN
(HP), INC.; THE PERMANENTE MEDICAL
20 GROUP, INC.; and DOES 1 THROUGH 50,
INCLUSIVE,

21 Defendants.
22

Case No. RG20065123

**STIPULATION AND [PROPOSED]
PROTECTIVE ORDER –
CONFIDENTIAL AND ATTORNEYS
EYES ONLY DESIGNATIONS**

Judge: Brad Seligman
Dept: 23

Complaint Filed: June 17, 2020

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13 Minneapolis, MN 55402
**pro hac vice* application forthcoming

14 Attorneys for Plaintiff MICHAEL CUENCA
15 and the Putative Class
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1 **I. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the Parties hereby stipulate to and petition the Court to enter the following
6 Stipulated Confidentiality Agreement and Agreed [Proposed] Protective Order (hereinafter
7 “Protective Order”). The Parties acknowledge that this Protective Order does not confer blanket
8 protections on all disclosures or responses to discovery and that the protection it affords from
9 public disclosure and use extends only to the limited information or items that are entitled to
10 confidential treatment under the applicable legal principles. The Parties further acknowledge, as
11 set forth in Section 12.3, below, that this Protective Order does not entitle them to file
12 confidential information under seal.

13 **II. DEFINITIONS**

14 2.1 “ATTORNEYS EYES ONLY” Information or Items: information (regardless of
15 how it is generated, stored or maintained) or tangible things produced by any Party or its
16 consultants or experts which contains: (a) employee medical/psychological information;
17 (b) employee contact information; (c) personnel data, such as HRIS, applicant and compensation
18 data; and (d) the contents of employee evaluations.

19 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
20 information or items under this Protective Order.

21 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is
22 generated, stored or maintained) or tangible things produced by any Party or its consultants or
23 experts which contain trade secrets, private personnel information and/or information that
24 Defendants use or may use in the process of selecting employees for a position (or that may give
25 the viewer a competitive advantage in any selection process). The term “trade secrets” as used
26 herein means information that derives economic value, actual or potential, from not being
27 generally known to other persons who can obtain competitive advantage or economic value from
28 its disclosure or use. “Trade secrets” also means sensitive financial information integral to the

1 business operations of a Party for which the Party has a compelling interest in avoiding
2 disclosure. Examples of the types of information that may be designated “CONFIDENTIAL”
3 include, without limitation, any of the following:

- 4 (a) Trade secrets or other proprietary information of a Party;
- 5 (b) Confidential and/or private personnel information or records of persons not a Party
6 to this action;
- 7 (c) Documents prepared in conjunction with any aspect of job analysis, compensation,
8 promotion, job assignments and performance evaluations for individual current and former
9 employees;
- 10 (d) Plaintiff’s medical records or financial records; and
- 11 (e) Marketing, financial and business plans of a Party that is not otherwise publicly
12 available.

13 2.4 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
14 well as their support staff).

15 2.5 Designating Party: a Party or Non-Party that designates information or items that it
16 produces in disclosures or in responses to discovery as CONFIDENTIAL or ATTORNEYS’
17 EYES ONLY.

18 2.6 Disclosure or Discovery Material: all items or information, regardless of the
19 medium or manner in which it is generated, stored, or maintained (including, among other things,
20 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
21 responses to discovery in this matter.

22 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
23 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
24 consultant in this action.

25 2.8 House Counsel: attorneys who are employees of a Party to this action. House
26 Counsel does not include Plaintiff, Outside Counsel of Record or any other outside counsel.

27 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal
28 entity not named as a Party to this action.

1 2.10 Outside Counsel of Record: attorneys who are not employees of a Party to this
2 action but are retained to represent or advise a Party to this action and have appeared in this
3 action on behalf of that Party or are affiliated with a law firm which has appeared on behalf of
4 that Party.

5 2.11 Party: any Party to this action, including all of its officers, directors, employees,
6 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

7 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
8 Material in this action.

9 2.13 Professional Vendors: persons or entities that provide litigation support services
10 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
11 organizing, storing, or retrieving data in any form or medium) and their employees and
12 subcontractors.

13 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
14 ATTORNEYS EYES ONLY or CONFIDENTIAL.

15 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
16 Producing Party.

17 **III. SCOPE**

18 The protections conferred by this Stipulation and Protective Order cover not only
19 Protected Material (as defined above), but also (1) any information copied or extracted from
20 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and
21 (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal
22 Protected Material. However, the protections conferred by this Stipulation and Protective Order
23 do not cover the following information: (i) any information that is in the public domain at the
24 time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure
25 to a Receiving Party as a result of publication not involving a violation of this Protective Order,
26 including becoming part of the public record through trial or otherwise; and (ii) any information
27 known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the
28 disclosure from a source who obtained the information lawfully and under no obligation of

1 confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed
2 by a separate agreement or order.

3 **IV. DURATION**

4 Even after final disposition of this litigation, the confidentiality obligations imposed by
5 this Protective Order shall remain in effect until a Designating Party agrees otherwise in writing
6 or a court order otherwise directs. Final disposition shall be deemed to be the later of (1)
7 dismissal of all claims and defenses in this action, with or without prejudice; and (2) final
8 judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or
9 reviews of this action, including the time limits for filing any motions or applications for
10 extension of time pursuant to applicable law.

11 **V. DESIGNATING PROTECTED MATERIAL**

12 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
13 or Non-Party that designates information or items for protection under this Protective Order must
14 take care to limit any such designation to specific material that qualifies under the appropriate
15 standards. The Designating Party must designate for protection only those parts of material,
16 documents, items, or oral or written communications that qualify – so that other portions of the
17 material, documents, items, or communications for which protection is not warranted are not
18 swept unjustifiably within the ambit of this Protective Order.

19 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
20 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
21 unnecessarily encumber or retard the case development process or to impose unnecessary
22 expenses and burdens on other Parties) expose the Designating Party to sanctions. If it comes to a
23 Designating Party's attention that information or items that it designated for protection do not
24 qualify for protection, that Designating Party must promptly notify all other Parties that it is
25 withdrawing the mistaken designation.

26 5.2 Manner and Timing of Designations. Except as otherwise provided in this
27 Protective Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
28 or ordered, Disclosure or Discovery Material that qualifies for protection under this Protective

1 Order must be clearly so designated before the material is disclosed or produced.

2 Designation in conformity with this Protective Order requires:

3 (a) for information in documentary form (e.g., paper or electronic documents, but
4 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
5 Party affix the legend “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” to each page that
6 contains protected material. If only a portion or portions of the material on a page qualifies for
7 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
8 appropriate markings in the margins).

9 A Party or Non-Party that makes original documents or materials available for inspection
10 need not designate them for protection until after the inspecting Party has indicated which
11 material it would like copied and produced. During the inspection and before the designation, all
12 of the material made available for inspection shall be deemed CONFIDENTIAL or
13 ATTORNEYS’ EYES ONLY. After the inspecting Party has identified the documents it wants
14 copied and produced, the Producing Party must determine which documents, or portions thereof,
15 qualify for protection under this Protective Order. Then, before producing the specified
16 documents, the Producing Party must affix the “CONFIDENTIAL” or “ATTORNEYS’ EYES
17 ONLY” legend to each page that contains Protected Material.

18 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
19 Designating Party identify on the record, before the close of the deposition, hearing, or other
20 proceeding, all protected testimony.

21 (c) for information produced in some form other than documentary and for any other
22 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
23 or containers in which the information or item is stored the legend “CONFIDENTIAL” or
24 “ATTORNEYS’ EYES ONLY.”

25 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
26 designate qualified information or items does not, standing alone, waive the Designating Party’s
27 right to secure protection under this Protective Order for such material. Upon timely correction
28 of a designation, the Receiving Party must make reasonable efforts to assure that the material is

1 treated in accordance with the provisions of this Protective Order.

2 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

3 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
4 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
5 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
6 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
7 challenge a confidentiality designation by electing not to mount a challenge promptly after the
8 original designation is disclosed.

9 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
10 process by providing written notice of each designation it is challenging and describing the basis
11 for each challenge (the "Designation Objections"). To avoid ambiguity as to whether a challenge
12 has been made, the written notice must recite that the challenge to confidentiality is being made in
13 accordance with this specific paragraph of the Protective Order. The Parties shall attempt to
14 resolve each challenge in good faith and must meet and confer directly (in voice to voice
15 dialogue; other forms of communication are not sufficient) within 14 days of the date of service
16 of notice. In conferring, the Challenging Party must explain the basis for its belief that the
17 confidentiality designation was not proper and must give the Designating Party an opportunity to
18 review the designated material, to reconsider the circumstances, and, if no change in designation
19 is offered, to explain the basis for the chosen designation.

20 6.3 Judicial Intervention.

21 (a) Motion for Protective Order: If the dispute is not resolved, then the Designating
22 Party shall have 30 days from receipt of the Challenging Party's written notice to either (a) agree
23 in writing to de-designate Documents, Testimony or Information pursuant to any or all of the
24 Designation Objections and/or (b) file a motion with the Court seeking to uphold any or all
25 designations on Documents, Testimony or Information addressed by the Designation Objections
26 (the "Designation Motion"). The Designating Party shall have the burden on any Designation
27 Motion of establishing the applicability of its "Confidentiality" or "Attorneys' Eyes Only"
28 designation. The Challenging Party may then file an opposition to such motion and the

1 Designating Party file a reply in accordance with rules of this Court. In the event that the
2 Designation Objections are neither timely agreed to nor timely addressed in the Designation
3 Motion, then such documents, Testimony or Information shall be de-designated in accordance
4 with the Designation Objection applicable to such material.

5 (b) Status Pending Resolution of Dispute: Notwithstanding any challenge to the
6 designation of material as containing Protected Material, the material shall be treated as Protected
7 Material and shall be subject to the provisions hereof unless and until one of the following occurs:
8 (i) all Parties that claim that the material contains Protected Material withdraw such designation
9 in writing; or (ii) a Court order is issued ruling that the material does not contain
10 CONFIDENTIAL or ATTORNEYS' EYES ONLY information.

11 6.4 Rights of Parties: This Protective Order is without prejudice to the right of any
12 Party to apply to the Court for any further protective order relating to any Protected Material or
13 for an order permitting disclosure of any Protected Material beyond the terms of this Protective
14 Order.

15 VII. ACCESS TO AND USE OF PROTECTED MATERIAL

16 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
17 or produced by another Party or by a Non-Party in connection with this case only for prosecuting,
18 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only
19 to the categories of persons and under the conditions described in this Protective Order. When
20 the litigation has been terminated, a Receiving Party must comply with the provisions of Section
21 13 (FINAL DISPOSITION).

22 Protected Material must be stored and maintained by a Receiving Party at a location and
23 in a secure manner that ensures that access is limited to the persons authorized under this
24 Protective Order.

25 7.2 Disclosure of CONFIDENTIAL Information or Items. Unless otherwise ordered
26 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
27 information or item designated CONFIDENTIAL only to:

28 (a) Plaintiff;

1 (b) the Receiving Party's Outside Counsel of Record in this action, as well as
2 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
3 information for this litigation;

4 (c) the officers, directors, and employees (including House Counsel) of the Receiving
5 Party to whom disclosure is reasonably necessary for this litigation;

6 (d) Experts (as defined in this Protective Order) of the Receiving Party to whom
7 disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment
8 and Agreement to Be Bound" (Exhibit A);

9 (e) the court and its personnel;

10 (f) court reporters and their staff, professional jury or trial consultants, mock jurors,
11 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
12 have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

13 (g) during their depositions, witnesses in the action to whom disclosure is reasonably
14 necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A),
15 unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed
16 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
17 bound by the court reporter and may not be disclosed to anyone except as permitted under this
18 Protective Order. If designation of ATTORNEYS' EYES ONLY information is made, those
19 portions of said depositions involving such ATTORNEYS' EYES ONLY information will be
20 taken with no one present except (i) those persons who are authorized to have access to such
21 ATTORNEYS' EYES ONLY information in accordance with this Protective Order, (ii) counsel
22 for the Parties and any in-house counsel for Defendants, (iii) the reporter and videographer, if
23 any, and (iv) the deponent and deponent's counsel, if the deponent has separate legal counsel;

24 (h) the author or recipient of a document containing the information or a custodian or
25 other person who otherwise possessed or knew the information; and

26 (i) mediators engaged by the Parties.

27 7.3 Disclosure of information designated as ATTORNEYS' EYES ONLY. Disclosure
28 of information designated as ATTORNEYS' EYES ONLY, including summaries thereof, shall be

1 limited to the following:

2 (a) The Court and its personnel;

3 (b) the Parties' Outside Counsel of Record and their employees;

4 (c) Defendants' House Counsel or otherwise specifically identified counsel for
5 Defendants, and associate or contract attorneys and paralegal and clerical employees assisting any
6 of these counsel;

7 (d) Defendants and their officers, directors, managers and human resources staff, but
8 only to the extent to which disclosure to them is reasonably necessary to evaluate and defend
9 against the claims in this case;

10 (e) and to the following persons, who have signed the "Acknowledgment and
11 Agreement to Be Bound" (Exhibit A):

12 (i) court reporters and videographers of sworn proceedings in which the
13 ATTORNEYS' EYES ONLY information is raised;

14 (ii) services retained by counsel to photocopy, image or tabulate information from
15 documents or evidence or to prepare charts, summaries, timelines, illustrations, or other
16 demonstrative materials to be used in the litigation;

17 (iii) experts or consultants (not including Competitors) retained by the Parties; and

18 (iv) deponents as set forth in Section 7.2(f) above.

19 (f) If it becomes necessary for counsel for a Party or Parties receiving ATTORNEYS'
20 EYES ONLY information to disclose a verbal summary of the information to their client in order
21 to properly advise the client or discuss settlement of this litigation, Counsel for the Receiving
22 Party or Parties shall notify counsel for the Producing Party in writing of their desire to disclose
23 such information and shall identify the persons(s) to whom they intend to make disclosure and the
24 general purpose of the disclosure. The Parties shall negotiate in good faith an exception for
25 disclosure of a verbal summary of the information (but not any underlying documents) where
26 reasonably necessary for counsel for the Receiving Party to properly advise their client.

27 (g) If it becomes necessary for counsel for a Party or Parties receiving ATTORNEYS'
28 EYES ONLY information to disclose it to some other person(s) (other than as set forth in

1 subsection (a)-(f) immediately above), in order to properly prepare this litigation for trial, or for
2 other court proceedings or filings in this litigation, or to evaluate the facts, claims, and defenses
3 for purposes of discussing settlement of this litigation, the following procedures shall be
4 employed:

5 (i) Counsel for the Receiving Party or Parties shall notify, in writing by overnight
6 delivery or e-mail or fax, counsel for the Producing Party of the ATTORNEYS' EYES ONLY
7 information of their desire to disclose such information and shall identify the persons(s) to whom
8 they intend to make disclosure and the general purpose of the disclosure.

9 (ii) If no objection to such disclosure is made by counsel for the producing Party
10 within five (5) business days of receipt of such notification, counsel for the Receiving Party or
11 Parties shall be free to make such disclosure to the designated person(s); provided, however, that
12 counsel for the Receiving Party or Parties shall serve upon counsel for the Producing Party, prior
13 to disclosure, an executed "Acknowledgment and Agreement to Be Bound" (Exhibit A), whereby
14 such person agrees to comply with and be bound by this Protective Order.

15 (iii) If the Producing Party objects to such disclosure, the Party wishing to make such
16 disclosure may bring before the Court the question of whether the particular ATTORNEYS'
17 EYES ONLY information can be disclosed to the designated person(s) without waiting for the
18 producing Party to do so.

19 (h) Whenever any Party brings before the Court the question of whether particular
20 ATTORNEYS' EYES ONLY information can be disclosed to designated person(s) the Party
21 objecting to such disclosure shall have the burden of establishing before the Court the necessity
22 for preventing such disclosure. Notwithstanding any other provision of this paragraph 7.3, it is
23 understood that material designated ATTORNEYS' EYES ONLY will not be shown, shared or
24 transmitted in any fashion to any Party plaintiff (or putative class member or, should a class be
25 certified, any class member) without the express agreement of Defendants' counsel, which
26 agreement will not unreasonably be denied, or by order of the Court.

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1 **VIII. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
2 **OTHER LITIGATION**

3 If a Party is served with a subpoena or a court order issued in other litigation that compels
4 disclosure of any information or items designated in this action as CONFIDENTIAL or
5 ATTORNEYS' EYES ONLY that Party must:

6 (a) promptly notify in writing the Designating Party. Such notification shall include a
7 copy of the subpoena or court order;

8 (b) promptly notify in writing the Party who caused the subpoena or order to issue in
9 the other litigation that some or all of the material covered by the subpoena or order is subject to
10 this Protective Order. Such notification shall include a copy of this Protective Order; and

11 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
12 Designating Party whose Protected Material may be affected.

13 If the Designating Party timely seeks a protective order, the Party served with the
14 subpoena or court order shall not produce any information designated in this action as
15 CONFIDENTIAL or ATTORNEYS' EYES ONLY before a determination by the court from
16 which the subpoena or order issued, unless the Party has obtained the Designating Party's
17 permission. The Designating Party shall bear the burden and expense of seeking protection in
18 that court of its confidential material – and nothing in these provisions should be construed as
19 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
20 another court.

21 **IX. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
22 **THIS LITIGATION**

23 (a) The terms of this Protective Order are applicable to information produced by a
24 Non-Party in this action and designated as CONFIDENTIAL or ATTORNEYS' EYES ONLY.
25 Such information produced by Non-Parties in connection with this litigation is protected by the
26 remedies and relief provided by this Protective Order. Nothing in these provisions should be
27 construed as prohibiting a Non-Party from seeking additional protections.

28 (b) In the event that a Party is required, by a valid discovery request, to produce a
Non-Party's confidential information in its possession, and the Party is subject to an agreement

1 with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

2 (i) promptly notify in writing the Requesting Party and the Non-Party that
3 some or all of the information requested is subject to a confidentiality agreement with a
4 Non-Party;

5 (ii) promptly provide the Non-Party with a copy of the Protective Order in this
6 litigation, the relevant discovery request(s), and a reasonably specific description of the
7 information requested; and

8 (iii) make the information requested available for inspection by the Non-Party.

9 (c) If the Non-Party fails to object or seek a protective order from this Court within 14
10 days of receiving the notice and accompanying information, the Receiving Party may produce the
11 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely
12 seeks a protective order, the Receiving Party shall not produce any information in its possession
13 or control that is subject to the confidentiality agreement with the Non-Party before a
14 determination by the Court. Absent a court order to the contrary, the Non-Party shall bear the
15 burden and expense of seeking protection in this Court of its Protected Material.

16 **X. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

17 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
18 Material to any person or in any circumstance not authorized under this Protective Order, the
19 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
20 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
21 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
22 Protective Order, and (d) request such person or persons to execute the "Acknowledgment and
23 Agreement to Be Bound" that is attached hereto as Exhibit A.

24 **XI. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL**

25 The inadvertent production by any of the undersigned Parties or non-Parties to the
26 Proceedings of any information designated as CONFIDENTIAL or ATTORNEYS' EYES ONLY
27 shall be without prejudice to any claim that such item is CONFIDENTIAL or ATTORNEYS'
28 EYES ONLY and such Party shall not be held to have waived any rights by such inadvertent

1 production. In the event that any information designated as CONFIDENTIAL or ATTORNEYS'
2 EYES ONLY is inadvertently produced without such designation, the Party that inadvertently
3 produced the document shall give written notice of such inadvertent production within twenty
4 (20) days of discovery of the inadvertent production (the "Inadvertent Production Notice"). Upon
5 receipt of such Inadvertent Production Notice, the Party that received the inadvertently produced
6 information shall promptly destroy the inadvertently produced information and all copies thereof,
7 or, at the expense of the producing Party, return such together with all copies of such information
8 to counsel for the producing Party. Should the receiving Party choose to destroy such
9 inadvertently produced information, the receiving Party shall notify the producing Party in
10 writing of such destruction within ten (10) days of receipt of written notice of the inadvertent
11 production. This provision is not intended to apply to any inadvertent production of any
12 information protected by attorney-client or work product privileges. In the event that this
13 provision conflicts with any applicable law regarding waiver of confidentiality through the
14 inadvertent production of Documents, Testimony or Information, such law shall govern.

15 **XII. MISCELLANEOUS**

16 12.1 Right to Further Relief. Nothing in this Protective Order abridges the right of any
17 person to seek its modification by the Court in the future.

18 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
19 Order no Party waives any right it otherwise would have to object to disclosing or producing any
20 information or item on any ground not addressed in this Protective Order. Similarly, no Party
21 waives any right to object on any ground to use in evidence of any of the material covered by this
22 Protective Order.

23 12.3 Filing Protected Material. Without written permission from the Designating Party
24 or a court order secured after appropriate notice to all interested persons, a Party may not file in
25 the public record in this action any Protected Material. A Party that seeks to file with the Court
26 any document, pleading, or tangible item which contains CONFIDENTIAL or ATTORNEYS'
27 EYES ONLY information must comply with the procedures of this Court. Protected Material
28 may only be filed under seal pursuant to a court order authorizing the sealing of the specific

1 Protected Material at issue. If a Receiving Party's request to file Protected Material under seal is
2 denied by the Court, then the Receiving Party may file the information in the public record unless
3 otherwise instructed by the Court.

4 **XIII. FINAL DISPOSITION**

5 Within 60 days after the final disposition of this action, as defined in Section 4
6 (DURATION), each Receiving Party must return all CONFIDENTIAL and ATTORNEYS'
7 EYES ONLY information furnished pursuant to this Protective Order, and all copies thereof, to
8 the producing attorneys of record, or, at the producing Party's option, destroyed by counsel for
9 the receiving Party or Parties. As used in this subdivision, "all Protected Material" includes all
10 copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of
11 the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving
12 Party must submit a written certification to the Producing Party (and, if not the same person or
13 entity, to the Designating Party) by the 60 day deadline that (1) identifies (by Bates number or
14 category, where appropriate) all the Protected Material that was returned or destroyed and (2)
15 affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries
16 or any other format reproducing or capturing any of the Protected Material. Notwithstanding this
17 provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial,
18 deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial
19 exhibits, expert reports, attorney work product, and consultant and expert work product, even if
20 such materials contain Protected Material, but not any underlying Confidential
21 Information/Documents, including any and all Attorneys' Eyes Only Confidential
22 Information/Documents, produced by the other Party. Any such archival copies that contain or
23 constitute CONFIDENTIAL and ATTORNEYS' EYES ONLY information produced hereunder
24 as Protected Material shall remain subject to this Protective Order as set forth in Section 4
25 (DURATION). Even after final

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1 disposition of this matter, the obligations imposed by this Stipulated Protective Order shall
2 remain in effect until the Parties agree otherwise in writing or a court order otherwise directs.

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

4 DATED: January____, 2021

BRYAN SCHWARTZ LAW

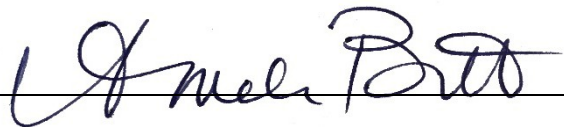
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6 BY: 
bryanschwartz (Jan 25, 2021 17:44 PST)

7 BRYAN J. SCHWARTZ

8 Attorneys for Plaintiff
MICHAEL CUENCA

9 DATED: January 25, 2021

GBG LLP

10
11 BY: 

12
13 Attorneys for Defendants
14 KAISER FOUNDATION HOSPITALS; KAISER
15 FOUNDATION HEALTH PLAN, INC.; and THE
16 PERMANENTE MEDICAL GROUP, INC.
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ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: _____

Judge of the Superior Court

EXHIBIT A

CERTIFICATION RE CONFIDENTIAL DISCOVERY MATERIALS

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and
understand the Protective Order that was issued by the Superior Court for the State of California,
County of Alameda, in the case of *Michael Cuenca, individually and on behalf of all others*
similarly situated, v. Kaiser Foundation Hospitals; Kaiser Foundation Health Plan (HP), Inc;
The Permanente Medical Group, Inc.; and Does 1 through 50, inclusive, Case No. RG20065123.
I agree to comply with and to be bound by all the terms of this Protective Order and I understand
and acknowledge that failure to so comply could expose me to sanctions and punishment in the
nature of contempt. I solemnly promise that I will not disclose in any manner any information or
item that is subject to this Protective Order to any person or entity except in strict compliance
with the provisions of this Order.

I further agree to submit to the jurisdiction of the Alameda County Superior Court for the
purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings
occur after termination of this action.

I hereby appoint _____ [print or type full name]
of _____ [print or type full address and telephone
number] as my California agent for service of process in connection with this action or any
proceedings related to enforcement of this Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed Name: _____

Signature: _____

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Janet Gogna

Exhibit G

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npederson@nka.com
*pro hac vice application forthcoming

*Attorneys for Plaintiff Michael Cuenca
and the Putative Class*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA – UNLIMITED JURISDICTION

MICHAEL CUENCA, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

KAISER FOUNDATION HEALTH PLAN,
INC., KAISER FOUNDATION HOSPITALS,
THE PERMANENTE MEDICAL GROUP,

Case No.: RG20065123

CLASS ACTION

**SECOND AMENDED COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF**

- 1. Violation of California Equal Pay Act (“EPA”), as amended (Labor Code §§1197.5, 1194.5)**
- 2. Violation of Fair Employment and Housing**

INC., and SOUTHERN CALIFORNIA
PERMANENTE MEDICAL GROUP; and
DOES 1 THROUGH 50, INCLUSIVE,

Defendants.

Act (“FEHA,” Cal. Gov’t Code §12940 *et seq.*) – Race- and National Origin-Based Discrimination

3. Violation of Title VII (42 U.S.C. §2000e, *et seq.*) – Race- and National Origin-Based Discrimination
4. Violation of Section 1981 – Race Discrimination (42 U.S.C. §1981 *et seq.*)
5. Violation of FEHA (Cal. Gov’t Code §12940 *et seq.*) – Failure to Prevent Race- and National Origin-Based Discrimination
6. Violation of FEHA (Cal. Gov’t Code §12940 *et seq.*) – Retaliation (as to Plaintiff Cuenca)
7. Violation of EPA (Labor Code §§1197.5, 1194.5) – Retaliation (as to Plaintiff Cuenca)
8. Unlawful and/or Unfair Business Practices (Cal. Business & Professions Code §17200 *et seq.*)
9. Declaratory Judgment (Cal. Code. Civ. Proc. §1060 *et seq.*)
10. Penalties under the Labor Code Private Attorneys General Act (Labor Code §§2698-2699.5)

JURY TRIAL DEMANDED

1 Plaintiff Michael Cuenca, individually and on behalf of all others similarly situated, is informed
2 and believes, and therefore alleges, as follows:

3 **I. NATURE OF THIS ACTION**

4 1. Plaintiff Michael Cuenca brings this action on a class and representative basis on behalf
5 of himself and a California-only Class of Hispanic/Latino¹ individuals who meet the following
6 parameters at any time between June 17, 2016 and March 31, 2021 (“Class Period”): (a) the following
7 California Regions – NCAL, SCAL, California locations of Program Offices, and California locations
8 of the KP-IT Region; (b) the following California Entities – Kaiser Foundation Hospitals, Kaiser
9 Foundation Health Plan, The Permanente Medical Group, and Southern California Permanente Medical
10 Group; (c) exempt and non-exempt employees; (d) full-time, non-union, director-level and below, and
11 non-clinical jobs only; (e) the following two job families – Administrative Support and Consulting
12 Services – which are identified as “Covered Jobs” in Exhibit 1 to this Complaint; and (f) the “Additional
13 Covered Jobs” listed in Exhibit 1 to this Complaint (the “Class”). The Class does not include individuals
14 in Intern or Student Temporary jobs. Over 2,500 employees currently fall under this class definition.
15 These employees share a community of interest and are similarly situated under California Code of
16 Civil Procedure § 382.

17 2. Throughout the Class Period and throughout California, Kaiser has discriminated against
18 its Hispanic/Latino employees in the Class by paying them at rates less than those which Kaiser pays
19 employees of other races and national origins,² for performing substantially similar work, when viewed
20 as a composite of skill, effort, and responsibility, under similar working conditions, in violation of the
21 California Equal Pay Act, Cal. Labor Code § 1197.5, as amended. The disparity is especially severe as
22 compared to white employees. Kaiser’s failure to pay Hispanic/Latino employees in the Class at rates
23 equal to those it pays employees of other races and national origins for performing substantially similar
24

25 ¹ Allegations are based on Kaiser’s “Ethnic Group” designation system within the “My Profile” section
26 of the employee portal. The term “Hispanic/Latino” is the terminology Kaiser uses to classify
employees of Hispanic (including Spanish)/Latin American descent.

27 ² In this Complaint, the term “national origin” is used, consistent with California’s FEHA regulation, 2
28 C.C.R. §11027.1, which also encompasses “ethnicity,” a term used in the Equal Pay Act. Plaintiff
intends these terms to be interchangeable for purposes of this Complaint.

1 work is not justified by any bona fide factor other than race or ethnicity.

2 3. Throughout the Class Period and throughout California, Kaiser has also discriminated
3 against its Hispanic/Latino employees through its promotions policies. As a result, Hispanic/Latino
4 employees are drastically under-represented in positions of management and leadership. These
5 disparities are particularly pronounced comparing the percentages of white employees versus the
6 percentages of Hispanic/Latino employees in executive management. Furthermore, Hispanic/Latino
7 employees are the only racial/ethnic group other than “white” whose percentage of Kaiser’s workforce
8 is less than the corresponding percentage of California’s population as a whole. All other non-white
9 racial/ethnic groups (with the exception of Native Americans) are a higher percentage of Kaiser’s
10 workforce than they are of California’s population as a whole. Kaiser’s discriminatory promotions
11 policies and/or practices against Hispanic/Latino employees are not justified by any lawful reason.

12 4. At all relevant times, Kaiser has known or should have known of this pay disparity
13 between various races and national origins, yet Kaiser has taken no action to equalize pay for
14 substantially similar work. Kaiser’s failure to pay Hispanic/Latino employees the same wage rates paid
15 to employees of other races and/or national origins for substantially similar work has been and is willful.

16 5. At all relevant times, Kaiser has likewise known or should have known of its promotions
17 disparities between various races and national origins, yet Kaiser has taken no action to provide equal
18 opportunity to employment. Kaiser’s failure to do so has been and is willful.

19 6. As a result of Kaiser’s discriminatory and unlawful pay and promotion policies and/or
20 practices, Plaintiff and Class Members have been denied fair wages for all work performed during the
21 Class Period and are entitled to wages due, interest thereon, and liquidated damages, plus interest. In
22 addition to damages, Plaintiff also seeks declaratory and injunctive relief enjoining Kaiser from
23 continuing to pay Hispanic/Latino employees less than employees of other races and/or national origins
24 for substantially similar work.

25 **II. JURISDICTION AND VENUE**

26 7. This Court has jurisdiction over this matter because Defendant is a corporation that
27 maintains its headquarters in California, is licensed to do business in California, regularly conducts
28 business in California, and committed and continues to commit the unlawful practices and acts alleged

1 herein in California.

2 8. Venue is proper in Alameda County, California, pursuant to California Government
3 Code § 12965(b), because Defendant is a corporation that maintains its headquarters in Alameda County
4 and because a substantial part of the unlawful practices and acts alleged herein occurred and continue
5 to occur in this County.

6 **III. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

7 9. On August 14, 2020, Plaintiff timely filed a charge of discrimination and retaliation with
8 the California Department of Fair Employment and Housing (“DFEH”) against the above-referenced
9 Defendants. Plaintiff requested, and the DFEH issued, an immediate Right-to-Sue Notice. Accordingly,
10 Plaintiff has timely exhausted his administrative remedies. A true-and-correct copy of Plaintiff’s Right-
11 to-Sue Notice is attached to this complaint as **Exhibit A**.³

12 10. On June 16, 2020, Plaintiff also filed a charge of discrimination with the Office of
13 Federal Contract Compliance Programs (“OFCCP”).

14 11. On June 17, 2020 and then subsequently on August 18, 2020, Plaintiff sent notice via
15 the online submission portal to the Labor and Workforce Development Agency and by certified mail to
16 Defendants a letter alleging violations of the Private Attorneys General Act (“PAGA”), Labor Code §§
17 2698—2699.5.

18 **IV. PARTIES**

19 12. Plaintiff has been employed as a Business Analyst/Specialist for Kaiser’s Human
20 Resources People Analytics group since April 2015 at Kaiser’s headquarters in Oakland, CA, receiving
21 his paychecks from Kaiser Foundation HP, Inc. Prior to that, from approximately May 2011 to April
22 2015, Plaintiff worked as a Project Manager Consultant/Specialist for Kaiser’s National Diversity
23 Department at Kaiser’s headquarters in Oakland, CA. Plaintiff is, and at all relevant times herein was,
24 an adult Hispanic male residing in California. From at least the beginning of the class period to the
25 present, Plaintiff and employees of other races and/or national origins performed substantially similar
26 work, when viewed as a composite of skill, effort, and responsibility, and performed under similar

27 ³ On June 16, 2020 and July 2, 2020, Plaintiff timely filed charges with the DFEH identifying Kaiser
28 Permanente as the Defendant.

1 working conditions. However, Kaiser has paid Plaintiff less than employees of other races and/or
2 national origins for substantially similar work.

3 13. Defendant Kaiser Foundation Hospitals is a healthcare business. Kaiser Foundation
4 Hospitals' headquarters are located at One Kaiser Plaza, Oakland, CA 94612.

5 14. Defendant Kaiser Foundation HP, Inc. is a healthcare business. Kaiser Foundation HP,
6 Inc. is headquartered at One Kaiser Plaza, Oakland, CA 94612.

7 15. Defendant The Permanente Medical Group, Inc. is a healthcare business. The
8 Permanente Medical Group, Inc. is headquartered at 1950 Franklin Street, Oakland, CA 94612.

9 16. Defendant Southern California Permanente Medical Group is a healthcare business. The
10 Southern California Permanente Medical Group is headquartered at 393 E Walnut St Pasadena, CA
11 91101.

12 17. Collectively, Defendants ("Kaiser") employ over 100,000 employees in Oakland and
13 throughout California. Kaiser is Plaintiff's FEHA and Title VII employer.

14 18. In addition to the above-referenced Defendants, Plaintiff sues fictitious defendants Does
15 1-50, inclusive, because their names, capacities, status, or facts showing them to be liable are not
16 presently known. Plaintiff is informed and believes, and thereon alleges, that each of the fictitiously
17 named Defendants is responsible in some manner for the occurrences herein alleged, and such
18 Defendants caused Plaintiff's damages as herein alleged. Plaintiff will amend this complaint to show
19 their true names and capacities, together with appropriate charging language, when such information
20 has been ascertained.

21 19. Plaintiff is informed, believes, and thereon alleges that each of the Defendants herein
22 was at all times relevant to this action the agent, employee, representative partner, and/or joint venture
23 of the remaining Defendants and was acting within the course and scope of the relationship. Plaintiff is
24 further informed, believes, and thereon alleges that each of the Defendants herein gave consent to,
25 ratified, and authorized the acts alleged herein to the remaining Defendants.

1 **V. FACTUAL ALLEGATIONS - CLASS**

2 **Kaiser has ignored Plaintiff Cuenca's reports of discrimination against Hispanic/Latino**
3 **employees in both pay and promotions**

4 20. On October 23, 2019, Plaintiff sent an email to then-CEO Bernard Tyson alerting him
5 to the lack of advancement opportunities for and pay discrimination against Hispanic/Latino employees.
6 Plaintiff attached a report to the email with data showing the extensive pay and promotion
7 discrimination against Hispanic/Latino employees. Plaintiff sent a follow up email to Tyson on October
8 25, 2019. Plaintiff received no response from Tyson to either email.

9 21. On October 25, 2019, Plaintiff received an email from Tod Trotter, Head of Human
10 Resources Compliance, stating that he would investigate the complaints to Tyson. Plaintiff was never
11 contacted about any such investigation.

12 22. On February 10, 2020, Plaintiff sent an email to Gregory Adams, the new CEO, alerting
13 him to the lack of advancement opportunities for and pay discrimination against Hispanic/Latino
14 employees. Plaintiff received no response.

15 23. On June 17, 2020, Plaintiff sent another email to Adams and Trotter, as well as Tom
16 Hanenburg, Interim Regional President of Kaiser Northern California; Richard Isaacs, CEO and
17 Executive Director of (Kaiser) Permanente Medical Group; Ron Copeland, Chief Equity, Inclusion, and
18 Diversity Officer; Christian Meisner, Chief Human Resources Officer; and Richele Thornburg,
19 Executive Vice President of People and Leadership Strategy for The Permanente Federation, attaching
20 an updated version of the report he had previously shared.

21 24. In his various communications with Kaiser's CEOs that reached HR, as outlined above,
22 Plaintiff emphasized that Hispanic/Latino employees are paid thousands or up to tens of thousands of
23 dollars a year less than non-Hispanic/Latino colleagues with similar tenure throughout the state.
24 Plaintiff also emphasized the concentration of Hispanic/Latino employees in Kaiser's lowest paying
25 jobs and the dearth of Hispanic employees in positions of management and leadership.

26 **Kaiser's uniform policies and practices of discrimination in pay and promotions**

27 25. Throughout the Class Period, Kaiser has maintained a general policy of discrimination
28 based on common policies and/or practices. The result is that Hispanic/Latino employees are the only

1 non-white racial/ethnic group whose percentage of Kaiser's workforce is less than the corresponding
2 percentage of California's population as a whole. All other non-white racial/ethnic groups (with the
3 exception of Native Americans) are a higher percentage of Kaiser's workforce than they are of
4 California's population. Hispanic/Latino employees are only about 19% of the Kaiser workforce, but
5 about 40% of the state's population. While Kaiser has a centralized and company-wide Affirmative
6 Action Plan that it is required to submit to the Office of Federal Contract Compliance Programs on an
7 annual basis, its actual policies and/or practices, and resulting workforce numbers, demonstrate glaring
8 disparities.

9 26. Kaiser has maintained such policies and/or practices of systemic discrimination against
10 Hispanic/Latino employees across the organization, resulting in drastic disparities with respect to pay
11 and promotions.

12 27. Throughout the Class Period, Kaiser's corporate headquarters has maintained
13 responsibility for hiring, setting wages, and assigning the location of employment across all of its
14 California offices. Likewise, Kaiser's central administrative officers, based in its Oakland headquarters,
15 have maintained centralized control over employees' terms and conditions of employment, including,
16 without limitation, job and location assignment, performance management and evaluation, career
17 progression, promotion, and compensation policies, practices, and procedures.

18 28. Throughout the Class Period, Kaiser's compensation policies and practices have been
19 and continue to be centrally determined and uniformly applied to all Kaiser's employees. Throughout
20 the Class Period, Kaiser has maintained and continues to maintain a centrally determined and uniformly
21 applied set of policies and/or practices for determining employees' wage rates throughout California,
22 including centralized policies and/or practices for setting employees' initial pay and other centralized
23 policies and/or practices concerning employee compensation, including but not necessarily limited to
24 policies/practices as to bonuses. These policies include, but are not limited to, uniform performance
25 evaluation systems that affect both pay and promotions. Upon information and belief, these systems
26 have resulted in lower ratings for Hispanic/Latino employees, and therefore, ultimately, less pay.
27 Defendant's performance evaluations systems are thus one of the policies contributing to systematic
28 discrimination against Hispanic/Latino employees.

1 29. Every job code at Kaiser has a specific pay range that is uniform throughout the state of
2 California and which determines initial pay. Bonuses are also determined through a centralized and
3 uniform process, using a standard formula for groups of employees, designed and controlled by Kaiser's
4 central administrative officers based in its Oakland headquarters.

5 30. From the beginning of the Class Period through the present, Kaiser has paid Hispanic
6 and/or Latino employees less than employees of other races and/or national origins for substantially
7 similar work, when viewed as a composite of skill, effort, and responsibility, and performed under
8 similar working conditions.

9 31. Throughout the Class Period, Kaiser has maintained and continues to maintain a
10 centrally determined and uniformly applied policy and/or practice throughout California of not
11 adjusting employees' wage rates to ensure that it does not pay its Hispanic and/or Latino employees
12 less than its employees of other races and/or national origins for substantially similar work.

13 32. Kaiser is required to maintain records of the wages and wage rates, job classifications,
14 and other terms and conditions of employment of all of its employees throughout California.
15 Furthermore, Kaiser tracks how much each employee makes in comparison to others of the same job
16 code, known as the "compa-ratio." Based upon this information, and Plaintiff's repeated complaints,
17 Kaiser therefore knew or should have known that it paid Hispanic/Latino employees in the Covered
18 Positions less than it paid its counterparts of other races and/or national origins for performing
19 substantially similar work. Yet Kaiser took no steps to eliminate its unlawful and discriminatory pay
20 practices at any time during the Class Period.

21 **VI. FACTUAL ALLEGATIONS – PLAINTIFF CUENCA**

22 33. Plaintiff is the only Hispanic/Latino member of his four-person demographic data
23 analysis team. He is the lowest-paid member of his team, despite having the same job code as two of
24 the three other members of his team, and despite his being more experienced than all three other
25 members of his team.

26 34. In 2015, in a mid-year performance review, Plaintiff received a negative rating in the
27 communications behavior criteria, which was based on what he alleged to be racial/national origin bias
28 on the part of his manager, Dan Lapporte. Mr. Lapporte accused Plaintiff of being "mean" and

1 “aggressive” towards a co-worker, playing into racist stereotypes about Hispanic men. After Plaintiff
2 reported his allegations to Human Resources, the accusation was removed from the performance review
3 and Plaintiff’s rating in that criteria increased.

4 35. Since that time, Plaintiff has applied to dozens of positions for which he is qualified and
5 which would constitute a promotion for Plaintiff, including numerous positions in Kaiser’s corporate
6 communications department. He has been turned down for every position, even as some positions
7 remain unfilled or are cancelled.

8 36. For example, Plaintiff applied for an open position as Communications Manager in the
9 office of the Chief of Staff of Information Technology. Plaintiff also reached out directly to the hiring
10 manager who stated that an interview was forthcoming. Plaintiff was also contacted by the recruiter,
11 who stated that there were actually eight open positions in the same category and in the same
12 department. The recruiter assured Plaintiff that, due to his background and experience in technology
13 communications, Plaintiff would surely be selected for one of the eight open positions.

14 37. Plaintiff interviewed for the position on December 17, 2018. However, Plaintiff never
15 heard back from the hiring manager or the recruiter, even despite his outreach efforts, which included
16 an email to the hiring manager on February 13, 2019.

17 38. Upon information and belief, others were hired for the open positions in 2019 to which
18 Plaintiff had applied and some positions remained open.

19 39. After a member of Plaintiff’s team resigned in November 2018, Plaintiff’s manager Mr.
20 Lapporte received approval to hire a replacement in spring 2019. Mr. Lapporte then worked with his
21 own manager to create a new analyst position that was more senior (with higher compensation) than the
22 position being vacated. This position would have been a promotion for Plaintiff. Plaintiff was informed
23 that this position was more technology-oriented than the position that was vacated. Plaintiff has
24 extensive experience in information technology and demographic data analysis.

25 40. Plaintiff applied for the position on April 22, 2019.

26 41. Mr. Lapporte never acknowledged Plaintiff’s candidacy for the position. Plaintiff’s
27 manager provided updates on the search for a candidate in meetings where Plaintiff was in attendance
28 but did not acknowledge Plaintiff’s application. Plaintiff’s manager later announced that the position

1 criteria had changed and a more technology-oriented candidate would no longer be sought out.

2 42. On September 26, 2019, Plaintiff was informed that the position had been filled. The
3 candidate who was selected was an internal program manager with less data analytics and HR analytics
4 experience. Plaintiff was and is more qualified for the position as it was advertised.

5 43. On July 15, 2019, Plaintiff filed an internal EEO complaint alleging pay discrimination,
6 retaliation, and discrimination in hiring/promotions including race/national origin discrimination. On
7 December 5, 2019, Plaintiff received an update on the status of his complaint, rejecting the pay
8 discrimination issue. On March 2, 2020, Plaintiff was informed that the investigation had concluded
9 and that Kaiser rejected his complaint. Plaintiff filed an internal administrative appeal on March 20,
10 2020. On May 5, 2020, Plaintiff received acknowledgment of his internal appeal. On June 9, 2020,
11 Plaintiff was informed that his appeal was rejected.

12 44. On June 17, 2020, Plaintiff sent an email to CEO Gregory Adams; Head of HR
13 Compliance Tod Trotter; Interim Regional President Tom Hanenburg; Executive Director of KP
14 Medical Group Richard Isaacs; Chief Equity, Inclusion, and Diversity Officer Ron Copeland; Chief HR
15 Officer Christian Meisner; and Executive Vice President Richele Thornburg alleging unequal pay and
16 discrimination based on national origin and race against Hispanic/Latino employees at Kaiser, including
17 himself.

18 45. On the morning of July 1, 2020, when Plaintiff had just returned to work following
19 bereavement leave, Plaintiff received a phone call from HR Representative Casandra Szalkiewicz
20 informing him that he was being placed on administrative leave, after being asked several questions
21 about the allegations he had made regarding national origin and race-based discrimination at Kaiser.
22 That same morning, a Kaiser representative came to Plaintiff's house to collect his work laptop and ID
23 badge. Plaintiff's job duties and access to Kaiser's systems were suspended and remain suspended.

24 VII. CLASS ALLEGATIONS

25 A. Class Definition

26 46. Plaintiff brings this action pursuant to California Code of Civil Procedure § 382 on
27 behalf of himself and a California-only Class of Hispanic/Latino individuals who meet the following
28 parameters at any time between June 17, 2016 and March 31, 2021: (a) the following California Regions

1 – NCAL, SCAL, California locations of Program Offices, and California locations of the KP-IT Region;
2 (b) the following California Entities – Kaiser Foundation Hospitals, Kaiser Foundation Health Plan,
3 The Permanente Medical Group, and Southern California Permanente Medical Group; (c) exempt and
4 non-exempt employees; (d) full-time, non-union, director-level and below, and non-clinical jobs only;
5 (e) the following two job families – Administrative Support and Consulting Services – which are
6 identified as “Covered Jobs” in Exhibit 1 to this Complaint; and (f) the “Additional Covered Jobs” listed
7 in Exhibit 1 to this Complaint.

8 47. This action is brought, and may properly be maintained, as a class action under § 382
9 because there is a well-defined community of interest in the litigation, and the proposed class is easily
10 ascertainable based upon Kaiser’s employee profile system which tracks employees’ race/ethnic group.

11 **B. Numerosity and Impracticability of Joinder**

12 48. The proposed Class is numerous and ascertainable. Plaintiff is informed and believes,
13 and on that basis alleges, that the proposed class consists of over 2,500 Hispanic/Latino employees
14 located across California, and therefore joinder of all individual Class Members would be impractical.

15 **C. Community of Interest**

16 49. There is a well-defined community of interest because common questions of law and
17 fact exist as to all members of the Class and predominate over any questions solely affecting individual
18 members of the Class. Those common questions of law and fact include, but are not limited to:

19 a. Whether Kaiser has had a systemic policy and/or practice of paying its
20 Hispanic/Latino employees less than what is paid to its employees of other races and/or national origins
21 performing substantially similar work, when viewed as a composite of skill, effort, and responsibility,
22 and performed under similar conditions;

23 b. Whether Kaiser’s systemic policy and/or practice of paying its Hispanic/Latino
24 employees less than that paid to their counterparts of other races and/or national origins violates the
25 California Equal Pay Act, as amended, Cal. Labor Code § 1197.5;

26 c. Whether Kaiser’s systemic policy and/or practice of paying its Hispanic/Latino
27 employees less than that paid to their counterparts of other races and/or national origins violates the
28 Fair Employment and Housing Act (FEHA), Cal. Gov’t. Code § 12940(a), Title VII, 42 U.S.C. § 2000e

1 *et seq.*, and Section 1981, 42 U.S.C. § 1981.

2 d. Whether Kaiser's systemic policy and/or practice of paying its Hispanic/Latino
3 employees less than that paid to employees of other races and/or national origins was willful;

4 e. Whether Kaiser's performance evaluation systems lead to lower overall
5 compensation and fewer promotions for Hispanic/Latino employees as compared to employees of other
6 races and/or national origins;

7 f. Whether Kaiser has had a systemic policy and/or practice of disproportionately
8 excluding Hispanic/Latino employees from management and leadership positions as compared to
9 employees of other races and/or national origins, leading to lower overall compensation;

10 g. Whether Kaiser's systemic policy and/or practice of excluding Hispanic/Latino
11 employees from management and leadership positions as compared to employees of other races and/or
12 national origins violates the Fair Employment and Housing Act (FEHA), Cal. Gov't. Code § 12940(a),
13 Title VII, 42 U.S.C. § 2000e *et seq.*, and Section 1981, 42 U.S.C. § 1981.

14 **D. Typicality of Claims and Relief Sought**

15 50. The claims of Plaintiff are typical of the claims of the proposed class. Plaintiff, like the
16 members of the proposed class, is Hispanic/Latino and worked for Kaiser in one of the positions at issue
17 in California during the Class Period. On information and belief, Plaintiff, like the members of the
18 proposed class, has been paid less than employees of other races and/or national origins for substantially
19 similar work, and has been denied opportunities for advancement in a manner that is disproportionate
20 as compared to employees of other race and/or national origins. The relief sought by the Plaintiff herein
21 is also typical of the relief sought on behalf of the proposed class.

22 **E. Adequacy of Representation**

23 51. Plaintiff is able to fairly and adequately protect the interests of all members of the class
24 because it is in Plaintiff's best interest to prosecute the claims alleged herein to obtain full compensation
25 due to the members of the class, and to obtain injunctive relief to protect the Class from further
26 discrimination going forward. Plaintiff's interests align with those of Class Members.

27 52. Plaintiffs have selected counsel who have the requisite resources and ability to prosecute
28 this case as a class action and are experienced labor and employment attorneys who have successfully

1 litigated class actions and other cases involving similar issues.

2 53. This suit is properly maintained as a class action under C.C.P. § 382 because Kaiser has
3 implemented an unlawful scheme that is generally applicable to the Class, making it appropriate to issue
4 final injunctive relief and corresponding declaratory relief with respect to the Class as a whole. This
5 suit is also properly maintained as a class action because the common questions of law and fact
6 predominate over any questions affecting only individual members of the class. For all these and other
7 reasons, a class action is superior to other available methods for the fair and efficient adjudication of
8 the controversy set forth herein.

9 **VIII. CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**

11 **Violation of the California Equal Pay Act, as amended Cal. Labor Code §§1197.5, 1194.5 (Brought by Plaintiff Cuenca on Behalf of Himself and the Class)**

12 54. Plaintiff hereby alleges and incorporates by reference all allegations in each and every
13 preceding paragraph as if fully set forth herein.

14 55. Kaiser willfully violated California Labor Code § 1197.5 by intentionally, knowingly,
15 and deliberately paying Hispanic and/or Latino employees less than employees of other races and/or
16 national origins for substantially similar work throughout the Class Period.

17 56. As a result of Kaiser's conduct, violation of California Labor Code § 1197.5, and/or
18 willful, knowing, and intentional discrimination, Plaintiff and Class Members have suffered and will
19 continue to suffer harm, including but not limited to lost earnings, lost benefits, and other financial loss,
20 as well as non-economic damages.

21 57. Plaintiff and Class Members are therefore entitled to all legal and equitable remedies
22 available, including an injunction under Labor Code § 1194.5, attorney's fees under Labor Code §
23 1197.5 and Cal. CCP §1021.5, and lost wages, interest, and liquidated damages.

24 **SECOND CAUSE OF ACTION**

25 **Race- and National Origin-Based Discrimination in Violation of FEHA (California Government Code § 12940, *et seq.*) (Brought by Plaintiff Cuenca on Behalf of Himself and the Class)**

26 58. Plaintiff hereby re-alleges and incorporates by reference all allegations in each and every
27
28

preceding paragraph as if fully set forth herein.

59. In relevant part, California Government Code §12940(a) provides that it shall be unlawful for an employer to discriminate against an employee in the terms and conditions of his employment because of his race and/or national origin.

60. California's regulations (2 C.C.R. Section 11027.1) define the term national origin broadly to include "the individual's or an ancestor's actual or perceived characteristics" including:

- Physical, cultural, or linguistic characteristics associated with a national origin group;
- Marriage to or association with persons of a national origin group;
- Tribal affiliation;
- Membership in or association with an organization identified with or seeking to promote the interests of a national origin group;
- Attendance or participation in schools, churches, temples, mosques, or other religious institutions generally used by persons of a national origin group;
- A name that is associated with a national origin group; and
- "National origin groups" including ethnic groups, geographic places of origin, and countries that are not presently in existence (*i.e.*, a geographic location or country, a formerly existing country, or a region that is not a country but that is associated with an ethnic group).

67. Plaintiff Cuenca and the putative Class Members are Hispanic/Latino and are thus members of a protected class.

68. Kaiser is an employer as defined by FEHA. Plaintiff and the putative Class Members were and are employees of Defendant, under the terms of the FEHA.

69. As set forth above, Defendant discriminated against Plaintiff Cuenca and the Class Members because of their race and national origin in pay and promotions. Plaintiff complained to Defendant regarding the discrimination, but Defendant allowed the discrimination to continue.

70. As a direct, legal, and proximate result of the discrimination, Plaintiff and the putative Class Members have suffered damages, including lost wages and other economic damages, emotional distress, and punitive damages, in an amount to be proven at trial.

71. By reason of the conduct of Defendant, Plaintiff has necessarily retained attorneys to

1 prosecute the action on behalf of himself and the class. Pursuant to California Government Code §
2 12965(b), as a result of Defendant's discrimination, Plaintiff and the class are entitled to recover
3 damages for economic harm, attorneys' fees, costs, and expert witness fees. Plaintiff and the class are
4 also entitled to attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

5 72. Defendant's actions were ratified by managing agents, and were willful, malicious,
6 fraudulent, and oppressive, and were committed with wrongful intent to harm Plaintiff and the Class
7 Members in conscious disregard of their rights. Plaintiff and the Class Members are therefore entitled
8 to recover punitive damages from Defendant in an amount according to proof at trial.

9 73. Plaintiff timely exhausted administrative remedies and obtained a right to sue.

10 **THIRD CAUSE OF ACTION**

11 **Race- and National Origin-Based Discrimination in Violation of Title VII** 12 **(42 U.S.C. §2000e, *et seq.*)** 13 **(Brought by Plaintiff Cuenca on Behalf of Himself and the Class)**

14 61. Plaintiff hereby re-alleges and incorporates by reference all allegations in each and every
15 preceding paragraph as if fully set forth herein.

16 62. Title VII provides that it is unlawful for an employer "to fail or refuse to hire or to
17 discharge any individual, or otherwise to discriminate against any individual with respect to his
18 compensation, terms, conditions, or privileges of employment, because of such individual's race, color,
19 ... or national origin[.]" 42 U.S.C. § 2000e-2(a).

20 67. Plaintiff Cuenca and the putative Class Members are Hispanic/Latino and are thus
21 members of a protected class.

22 68. Kaiser is an employer as defined by Title VII. Plaintiff and the putative Class Members
23 were and are employees of Defendant under the terms of the Title VII.

24 74. As set forth above, Defendant discriminated against Plaintiff Cuenca and the putative
25 Class Members because of their race and national origin in pay and promotions. Plaintiff complained
26 to Defendant regarding the discrimination, but Defendant allowed the discrimination to continue.

27 75. As a direct, legal, and proximate result of the discrimination, Plaintiff and the putative
28 Class Members have suffered damages, including loss of past, present, and future income and benefits,
loss of future employment opportunities and other economic damages, mental anguish, emotional

1 distress, loss of reputation, and other non-economic damages in an amount to be proven at trial.

2 76. Plaintiff and the putative Class Members are entitled to recover compensatory damages,
3 punitive damages, and interest, as well as attorneys' fees and costs incurred. 42 U.S.C. § 2000e-5(k);
4 42 U.S.C.A. § 1981a.

5 77. Plaintiff timely exhausted administrative remedies under Title VII.

6 **FOURTH CAUSE OF ACTION**

7 **Race Discrimination in Violation of Section 1981**

8 **(42 U.S.C. §1981, *et seq.*)**

9 **(Brought by Plaintiff Cuenca on Behalf of Himself and the Class)**

10 63. Plaintiff hereby re-alleges and incorporates by reference all allegations in each and every
11 preceding paragraph as if fully set forth herein.

12 64. Section 1981 provides that all persons in the United States “shall have the same right in
13 every State and Territory to make and enforce contracts . . . and to the full and equal benefit of all laws
14 and proceedings for the security of persons and property as is enjoyed by white citizens” 42 U.S.C.
15 § 1981(a). Under Section 1981, the phrase “make and enforce contracts” includes “the making,
16 performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges,
17 terms, and conditions of the contractual relationship.” 42 U.S.C. § 1981(b).

18 65. By the conduct described above, Defendant violated Section 1981. As set forth above,
19 Defendant discriminated against Plaintiff Cuenca and the putative Class Members because of their race
20 in pay and promotions. Plaintiff complained to Defendant regarding the discrimination, but Defendant
21 allowed the discrimination to continue.

22 78. As a direct, legal, and proximate cause of Defendant's unlawful conduct, Plaintiff and
23 the putative Class have suffered damages, including loss of past, present, and future income and
24 benefits, loss of future employment opportunities and other economic damages, mental anguish,
25 emotional distress, loss of reputation, and other non-economic damages in an amount to be proven at
26 trial.

27 79. Plaintiff and the putative Class Members are entitled to recover compensatory damages,
28 punitive damages, interest, as well as attorneys' fees and costs incurred in connection with this claim.
42 U.S.C. § 1981a(b); § 1988.

FIFTH CAUSE OF ACTION

**Failure to Prevent Race- and National Origin-Based Discrimination in Violation of FEHA
(California Government Code § 12940(k))
(Brought by Plaintiff Cuenca on Behalf of Himself and the Class)**

80. Plaintiff hereby re-alleges and incorporates by reference all allegations in each and every preceding paragraph as if fully set forth herein.

81. California Government Code § 12940(k) provides that it shall be an unlawful employment practice for an employer to fail to take all reasonable steps necessary to prevent discrimination, harassment, and retaliation from occurring in the workplace.

82. Plaintiff and the putative Class Members are Hispanic/Latino and are thus members of a protected class.

83. Kaiser is an employer as defined by FEHA.

84. Plaintiff and the putative Class Members were and are employees of Defendant, under the terms of the FEHA.

85. Defendant failed to provide Plaintiff and the Class Members with protections required under California Government Code § 12940(k) by not taking immediate and sufficient action to correct the discriminatory conduct directed at Hispanic/Latino employees, even after being alerted repeatedly to the discrimination by Plaintiff.

86. As a direct, legal, and proximate result of the discrimination, Plaintiff and the putative Class Members have suffered damages, including lost wages and other economic damages, emotional distress, and punitive damages in an amount to be proven at trial.

87. By reason of the conduct of Defendant, Plaintiff has necessarily retained attorneys to prosecute the action on behalf of himself and the class. Pursuant to California Government Code § 12965(b), as a result of Defendant's discrimination, Plaintiff and the class are entitled to recover damages for economic harm, attorneys' fees, costs, and expert witness fees. Plaintiff and the class are also entitled to attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

88. Defendant's actions were ratified by managing agents, and were willful, malicious, fraudulent, and oppressive, and were committed with wrongful intent to harm Plaintiff and the Class Members in conscious disregard of their rights. Plaintiff and the Class Members are therefore entitled to recover punitive damages from Defendant in an amount according to proof at trial.

1 89. Plaintiff timely exhausted administrative remedies and obtained a right to sue.

2 **SIXTH CAUSE OF ACTION**
3 **Retaliation in Violation of FEHA**
4 **(California Government Code § 12940(h))**
5 **(Brought by Plaintiff on Behalf of Himself)**

6 85. Plaintiff hereby re-alleges and incorporates by reference all allegations in each and every
7 preceding paragraph as if fully set forth herein.

8 86. California Government Code § 12940(h) provides that it shall be an unlawful
9 employment practice for an employer to discriminate against any person because the person has
10 opposed any practices forbidden under FEHA.

11 87. Plaintiff repeatedly opposed Kaiser's discrimination against Hispanic/Latino employees.

12 88. Kaiser is an employer as defined by FEHA.

13 89. Plaintiff is an employee of Defendant, under the terms of the FEHA.

14 90. Defendant retaliated against Plaintiff when he was denied promotions and performance
15 evaluations commensurate with his experience and qualifications and true performance, after his
16 known, protected activities.

17 91. As a direct, legal, and proximate result of the discrimination, Plaintiff has suffered
18 damages, including lost wages and other economic damages, emotional distress, and punitive damages
19 in an amount to be proven at trial.

20 92. By reason of the conduct of Defendant, Plaintiff has necessarily retained attorneys to
21 prosecute the action on behalf of himself and the class. Pursuant to California Government Code §
22 12965(b), as a result of Defendant's discrimination, Plaintiff is entitled to recover damages for
23 economic harm, attorneys' fees, costs, and expert witness fees.

24 93. Defendant's actions were ratified by managing agents, and were willful, malicious,
25 fraudulent, and oppressive, and were committed with wrongful intent to harm Plaintiff in conscious
26 disregard of his rights. Plaintiff and the Class Members are therefore entitled to recover punitive
27 damages from Defendant in an amount according to proof at trial.

28 94. Plaintiff timely exhausted administrative remedies and obtained a right to sue.

SEVENTH CAUSE OF ACTION
Retaliation in Violation of EPA
(as amended Cal. Labor Code §§1197.5, 1194.5)
(Brought by Plaintiff on Behalf of Himself)

95. Plaintiff hereby re-alleges and incorporates by reference all allegations in each and every preceding paragraph as if fully set forth herein.

96. California Labor Code § 1197.5(k) provides that it shall be an unlawful employment practice for an employer to retaliate against or otherwise discriminate against an employee because of any action taken by an employee to invoke or assist in any manner the enforcement of the Equal Pay Act.

97. Kaiser is an employer as defined by the EPA. Labor Code § 1197.5(l).

98. Plaintiff is an employee of Defendant.

99. Defendant retaliated against Plaintiff when he was removed from consideration for an open position after filing an internal EEO complaint raising equal pay and other discrimination claims.

100. As a direct, legal, and proximate result of the discrimination, Plaintiff has suffered damages, including lost wages and other economic damages, emotional distress, and punitive damages in an amount to be proven at trial.

101. Plaintiff is therefore entitled to all legal and equitable remedies available, including an injunction under Labor Code § 1194.5, attorney's fees under Labor Code § 1197.5 and Cal. CCP §1021.5, and lost wages, interest, and liquidated damages.

EIGHTH CAUSE OF ACTION
Unlawful and / or Unfair Business Practices,
Cal. Business & Professions Code § 17200 *et seq.*
(Brought by Plaintiff Cuenca on Behalf of Himself and the Class)

102. Plaintiff hereby re-alleges and incorporates by reference all allegations in each and every preceding paragraph as if fully set forth herein.

103. Kaiser's policies and/or practices of paying Hispanic/Latino employees less than employees of other races and/or national origins for substantially similar work performed constitutes a business practice because Kaiser's acts and omissions, as alleged herein, violate the California Equal Pay Act, as amended, Labor Code § 1197.5, and therefore constitute an unlawful business practice prohibited by Business & Professions Code § 17200 *et seq.* Kaiser's business practice of paying

1 Hispanic/Latino employees less than employees of other races and/or national origins for substantially
2 similar work causes harm to Plaintiff and Class Members that outweighs any reason Kaiser may have
3 for doing so. Kaiser's business practice as alleged herein is also racist, immoral, unethical, oppressive,
4 unscrupulous, and offensive to the established public policies of ensuring employees of all races and/or
5 national origins are paid equally for performing equal and substantially similar work, as reflected in the
6 California Equal Pay Act, Cal. Labor Code § 1197.5, and ensuring Hispanic/Latino employees are not
7 discriminated against in the workplace, as reflected in the California Fair Employment and Housing
8 Act, Cal. Gov't Code §12940.

9 104. Kaiser's policies and/or practices of disproportionately excluding Hispanic/Latino
10 employees from management and leadership positions as compared to employees of other races and/or
11 national origins constitutes a business practice because Kaiser's acts and omissions, as alleged herein,
12 violate the California Fair Employment and Housing Act, Cal. Gov't Code §12940, and therefore
13 constitute an unlawful business practice prohibited by Business & Professions Code § 17200 *et seq.*
14 Kaiser's discriminatory business practice regarding promotions causes harm to Plaintiff and Class
15 Members that outweighs any reason Kaiser may have for doing so. Kaiser's business practice as alleged
16 herein is also racist, immoral, unethical, oppressive, unscrupulous, and offensive to the established
17 public policies of ensuring Hispanic/Latino employees are not discriminated against in the workplace,
18 as reflected in the California Fair Employment and Housing Act, Cal. Gov't Code §12940.

19 105. As a result of its unlawful and/or unfair business practices, Kaiser has reaped and
20 continues to reap unfair and illegal profits at the expense of Plaintiffs and Class Members. Accordingly,
21 Kaiser should be disgorged of its illegal profits, and Plaintiffs and Class Members are entitled to
22 restitution with interest of such ill-gotten profits in an amount according to proof at the time of trial.

23 106. Kaiser's unlawful and/or unfair business practices entitle Plaintiffs and Class Members
24 to preliminary and permanent injunctive relief and other equitable relief available under law, including
25 attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

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107. Plaintiff hereby re-alleges and incorporates by reference all allegations in each and every preceding paragraph as if fully set forth herein.

109. A declaratory judgment is necessary and proper in that Plaintiff contends that Kaiser has committed and continues to commit the violations set forth above and, on information and belief, Kaiser will deny that it has done so and/or will continue to commit such acts. Given the necessity of a declaratory judgment, Plaintiff is also entitled to attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

**(Brought by Plaintiff on Behalf of Himself, All Similarly Aggrieved
Current and Former Kaiser Employees, and the State)**

111. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code § 2699(c), and is a proper representative to bring a civil action on behalf of himself and other current and former employees of Kaiser pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff is employed by Kaiser and the alleged violations of California Labor Code §§ 1197.5, 1194.5 were committed by Kaiser against him.

112. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2698—2699.5, Plaintiffs seek to recover civil penalties in the amount of \$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation of California Labor Code § 1197.5 as alleged herein.

113. Plaintiff is also entitled to an award of reasonable attorneys' fees and costs pursuant to

1 California Labor Code § 2699(g)(1).

2 114. Pursuant to California Labor Code § 2699.3, Plaintiff gave written notice by online filing
3 with the California Labor and Workforce Development Agency (“LWDA”) and by certified mail to
4 Kaiser of the specific provisions of the California Labor Code alleged to have been violated, including
5 the facts and theories to support the alleged violations. More than sixty-five (65) calendar days have
6 passed since the postmark date of Plaintiffs’ notice letter, and the LWDA has not provided notice to
7 Plaintiffs that it intends to investigate the alleged violations. Plaintiff has therefore complied with the
8 prerequisites set forth in California Labor Code § 2699.3 for commencing a representative action under
9 PAGA.

10 **IX. PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff, on behalf of himself, the proposed Class, and all others similarly situated,
12 requests judgment and the following specific relief against Defendant:

13 A. Certification of the Class as a class action under Code of Civil Procedure § 382, and
14 designation of Plaintiff Michael Cuenca as representative of the Class and his counsel of record as
15 Class Counsel;

16 B. All wages due pursuant to California Labor Code § 1197.5(h) in an amount to be
17 ascertained at trial;

18 C. For liquidated damages pursuant to California Labor Code § 1197.5(h);

19 D. For prejudgment interest on unpaid wages at a rate of 10% per annum pursuant to
20 California Labor Code § 1197.5(h) and California Civil Code §§ 3287-3288, and/or any other
21 applicable provision providing for prejudgment interest;

22 E. For declaratory relief against Defendant finding Kaiser’s employment policies,
23 practices and/or procedures challenged herein are illegal and in violation of the rights of Plaintiff and
24 members of the Class under California Government Code § 12940;

25 F. For restitution of all monies due to Plaintiff and Class Members, as well as
26 disgorgement of Kaiser’s profits from its unlawful and/or unfair business practices;

27 G. For back pay, front pay, injunctive relief, and emotional distress damages arising from
28 the discrimination against the class of Hispanic/Latino employees described above;

1 H. For an award of exemplary and punitive damages in an amount commensurate with
2 Defendant's ability to pay and to deter future conduct;

3 I. For preliminary and permanent injunctive relief under, *inter alia*, California Labor Code
4 § 1194.5, enjoining Kaiser from violating California Labor Code § 1197.5 by paying its
5 Hispanic/Latino employees less than that paid to their counterparts of other races and/or national
6 origins for substantially similar work and by disproportionately relegating Hispanic/Latino employees
7 to the lowest-paying and lowest grade jobs while disproportionately excluding Hispanic/Latino
8 employees from leadership and management positions, and from engaging in the unfair and unlawful
9 business practices complained of herein;

10 J. For statutory and civil penalties according to proof, including but not limited to all
11 penalties authorized by California Labor Code § 2699(f)(2);

12 K. For reasonable attorneys' fees and costs pursuant to California Labor Code §§ 1197.5(h)
13 and § 2699(g)(1), California C.C.P. § 1021.5, California Government Code § 12965(b), 42 U.S.C. §
14 2000e-5(k), 42 U.S.C. § 1988, and/or any other applicable provision providing for attorneys' fees and
15 costs.

16 L. For such further relief that the Court may deem just and proper.

17 **X. DEMAND FOR JURY TRIAL**

18 Pursuant to Code of Civil Procedure section 631, Plaintiff, individually, and on behalf of others
19 similarly situated, demands a trial by jury.

20
21 DATED:

BRYAN SCHWARTZ LAW
NICHOLS KASTER, PLLP

22 By:

23
24 _____
Bryan J. Schwartz (SBN 209903)
Matthew C. Helland (SBN 250451)

25
26 *Attorneys for Plaintiff and the Putative Class*
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