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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,

5 Defendants.

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

Complaint Filed: June 17, 2020

Trial Date: None

Department: 19

Reservation #: R-2257806

Hearing Date: May 17, 2021 3:00pm

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