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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,

Plaintiff,

vs.

KAISER FOUNDATION HEALTH PLAN,
INC., KAISER FOUNDATION
HOSPITALS, THE PERMANENTE
MEDICAL GROUP, INC., and
SOUTHERN CALIFORNIA
PERMANENTE MEDICAL GROUP, and
DOES 1 through 50, inclusive,

Defendants.

Case No. RG20065123

**PLAINTIFF'S UNOPPOSED MOTION
AND MEMORANDUM IN SUPPORT OF
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT**

Complaint Filed: June 17, 2020
Trial Date: None

Department: 19
Reservation #: R-2257806
Hearing Date: May 17, 2021 3:00pm

1 **NOTICE OF MOTION**

2 **PLEASE TAKE NOTICE** that on May 17, 2021 at 3:00 p.m. or as soon thereafter as the
3 matter may be heard in Department 19 of this Court, located at 1221 Oak Street, Oakland, California
4 94612, Plaintiff Michael Cuenca, on behalf of himself and all others similarly situated, will and hereby
5 does move for an order provisionally certifying the settlement class and granting preliminary approval
6 of the class action settlement filed herewith.

7 This unopposed Motion is based on this Notice of Motion, Plaintiff's Memorandum of Points and
8 Authorities in Support of Motion for Preliminary Approval of the Class Settlement, the supporting
9 Declaration of Bryan Schwartz, which includes the executed Class and PAGA Representative Action
10 Settlement and Release, the Declarations of Kelly Dermody, Robert Schug, and Alex Vekker, PhD, a
11 Proposed Order Provisionally Certifying the Settlement Class and Granting Preliminary Approval of the
12 Class Settlement, and a Proposed Notice to the Class with Claim Form and Envelope, all filed with this
13 Notice.

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17 DATED:

Respectfully submitted,

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21 _____
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Samuel Goldsmith
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27 *Attorneys for Plaintiff Michael Cuenca and the*
28 *proposed Settlement Class*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On behalf of themselves and a class of approximately 2,500 current and former Hispanic/Latino
4 employees at Kaiser Foundation Health Plan, Inc., Kaiser Foundation Hospitals, The Permanente Medical
5 Group, Inc., and Southern California Permanente Medical Group (collectively, “Kaiser,” “Defendants,”
6 or the “Company”), Plaintiff Michael Cuenca (the “Named Plaintiff”) respectfully requests that the Court:
7 (1) conditionally certify the below defined Class for settlement purposes only, pursuant to Code of Civil
8 Procedure section 382; (2) preliminarily approve the Class and PAGA Settlement Agreement and Release
9 (hereafter, the “Settlement”); (3) appoint Bryan Schwartz Law and Nichols Kaster PLLP Class Counsel;
10 (4) direct that the Notice be disseminated to the Class; and (5) schedule a final approval hearing.

11 This Settlement was realized after Plaintiff and Kaiser (the “Parties”) exchanged information and
12 then commenced intense negotiations for several months with the assistance of an expert labor statistician.
13 The result of these negotiations over alleged racial/ethnic inequities as to Hispanic/Latino employees at
14 Kaiser resulted in the proposed Settlement Plaintiff hereby submits. As detailed in Plaintiff’s Second
15 Amended Complaint, the Class consists of current and former full time, non-union, non-clinical
16 Hispanic/Latino employees employed by Kaiser from June 17, 2016 until March 31, 2021 (the “Class
17 Period”) at the Director level and below in the Administrative Support and Consulting Services job
18 families and related jobs in Plaintiff’s job family in the Northern California Region, the Southern
19 California Region, the California locations of Program Offices Region, and the California locations of the
20 KP-IT Region (the “Class”).

21 Plaintiff alleges that Defendants are liable on a class-wide basis for maintaining a policy or practice
22 of paying Hispanic/Latino employees less than their similarly situated non-Hispanic/Latino counterparts
23 and promoting similarly situated non-Hispanic/Latino employees over similarly situated Hispanic/Latino
24 employees. Plaintiff brought causes of action for violations of the California Equal Pay Act, the Fair
25 Employment and Housing Act, Title VII, and § 1981, among others, for these alleged unlawful practices.

26 As set forth herein, the Settlement the Parties reached is fair and reasonable in light of the risks
27 and costs of continued litigation and provides meaningful and prompt relief to Class Members. The
28 Settlement provides for a non-reversionary monetary fund of nearly \$7.4 million. In addition, the
Settlement provides for robust programmatic relief, worth millions of dollars more, paid for by Kaiser,

1 that Plaintiff believes will help Kaiser become a more inclusive and equitable workplace, including
2 significant new programs and extensive work by an independent third-party expert selected jointly by the
3 Parties.

4 Plaintiff asserts the Settlement satisfies all elements for certification and approval. First, the
5 proposed Class meets the requirements for class certification for settlement purposes under Code of Civil
6 Procedure section 382. Second, the Settlement is fair, reasonable, and adequate, warranting preliminary
7 approval. Third, Plaintiff is adequate to serve as the Class Representative. Fourth, Plaintiff's attorneys are
8 adequate to serve as Class Counsel.¹ Fifth, the proposed notice procedures, and related forms, adequately
9 apprise the Class Members of their rights. Sixth, scheduling a final fairness hearing will allow Class
10 Members an opportunity to be heard. Accordingly, and for the reasons detailed below, the Court should
11 grant this Motion in its entirety.

12 **II. FACTUAL AND PROCEDURAL BACKGROUND**

13 **A. Factual Background and Legal Claims**

14 Plaintiff Michael Cuenca has been employed as a Business Analyst/Specialist for Kaiser's Human
15 Resources People Analytics group since April 2015 in Oakland, California. (Second Am. Compl. ["SAC"]
16 ¶ 12.) In addition to asserting individual claims of retaliation, Plaintiff alleges that Kaiser maintains
17 common, universal pay and promotion policies and procedures that cause Hispanic/Latino employees to
18 be underpaid and under-promoted as compared to their similarly situated non-Hispanic/Latino
19 counterparts. In the operative complaint, Plaintiff asserts eight causes of action on behalf of the proposed
20 Class under the California Equal Pay Act ("EPA") and Labor Code Private Attorneys General Act
21 ("PAGA") (Labor Code §§ 1194.5, 1197.5, 2698, et seq.), the Fair Employment and Housing Act
22 ("FEHA") (Gov't Code § 12940 et seq.), Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et
23 seq.), Section 1981 (42 U.S.C. § 1981), and other related statutes. (SAC ¶¶ 54–114.)

24 In support of his allegations of class-wide misconduct and prior to filing this lawsuit, Plaintiff
25 conducted an analysis and prepared a report using data available to him in the course of his duties as a
26 Business Analyst/Specialist. That report included data which, according to Plaintiff, shows extensive
27 pay inequities and promotion disparities with respect to Hispanic/Latino employees at Kaiser. (SAC ¶ 20.)

28 ¹ The terms "Plaintiff's Counsel" and "Class Counsel" are interchangeably used in this memorandum to
refer to Plaintiff's attorneys at Bryan Schwartz Law and Nichols Kaster, PLLP.

1 On October 23, 2019, Plaintiff sent an email to then-CEO of Kaiser Permanente, Bernard Tyson, alerting
2 him to what Plaintiff perceived as a lack of advancement opportunities and apparent pattern of
3 discrimination against Hispanic/Latino employees. (*Id.*) After feeling unsatisfied with the response,
4 Plaintiff sent another email with an updated version of his report to several high-level officials at Kaiser,
5 including current CEO Richard Isaacs. (*Id.* at 23.) In these communications, Plaintiff emphasized his
6 allegation that Hispanic/Latino employees are paid thousands of dollars per year less than non-
7 Hispanic/Latino workers with similar tenure throughout California. (*Id.* at 24.) Plaintiff also emphasized
8 the concentration of Hispanic/Latino workers in Kaiser's lowest paying jobs and the dearth of Hispanic
9 workers in management and other leadership positions. (*Id.*)

10 In this suit, Plaintiff alleges that Defendants are liable class wide for maintaining a policy or
11 practice of paying Hispanic/Latino employees in the proposed Class at lower rates than their similarly-
12 situated non-Hispanic/Latino counterparts and treating Hispanic/Latino employees less favorably with
13 respect to promotions than similarly-situated non-Hispanic/Latino employees. (*Id.* ¶¶ 25–32.)

14 **B. Procedural Background**

15 Plaintiff's Counsel began investigating Plaintiff's and similarly-situated individuals' potential
16 claims in May 2020, following an earlier-commenced investigation by plaintiffs in another matter whose
17 counsel coordinated with the undersigned, as detailed below. (Schwartz Decl. ¶ 5.) On June 16, 2020, and
18 then again on July 2, 2020 and August 14, 2020, Plaintiff filed discrimination complaints with the
19 Department of Fair Employment and Housing. (SAC ¶ 9 n.3.) On June 16, 2020, Plaintiff also filed with
20 the U.S. Department of Labor's Office of Federal Contract Compliance Programs. (*Id.* ¶ 10.)

21 Plaintiff filed his Complaint on June 17, 2020. (Schwartz Decl. ¶ 5.) After being placed on leave
22 in July 2020, Plaintiff filed the First Amended Complaint on August 14, 2020 to add additional defendants,
23 additional factual allegations, and an individual claim of retaliation. (*Id.*) Shortly thereafter, Plaintiff
24 served written discovery on Defendants, Kaiser noticed the deposition of Plaintiff, and Plaintiff noticed a
25 deposition of the person most knowledgeable regarding his individual claims and his class claims. (*Id.*)
26 On October 1, 2020, Kaiser filed a demurrer and motion to strike class allegations. (*Id.*) After extensive
27 negotiations on the scope and timing of discovery, the Parties commenced settlement negotiations
28 beginning in November 2020. (*Id.* ¶ 6.) On or around the beginning of December 2020, the parties
stipulated to put a hold on discovery and operative motion deadlines in order to pursue settlement. (*Id.*)

1 After initiating settlement negotiations, the Parties engaged in a substantial exchange of data, and
2 analysis related to Plaintiff's class allegations. (Schwartz Decl. ¶ 8.) As part of these negotiations, Plaintiff
3 obtained multiple rounds of class-wide data and retained an expert, Alex Vekker, Ph.D., to conduct a
4 statistical analysis of pay and promotion disparities across the Class and to determine the scope and scale
5 of potential Class exposure and risk. (*Id.*; Declaration of Alexander Vekker, Ph.D. ["Vekker Decl."] at
6 pages 1-3.) The data production included dozens of variables that reflected Class Members' and other
7 employees' compensation and various job attributes, such as: base pay, incentive pay, performance review
8 ratings, employees' job families, functions, entities, start dates at the company, dates of birth, departments,
9 exempt/non-exempt status, locations, and salary grades. (Vekker Decl. at p. 2.) Plaintiff's expert, one of
10 the most seasoned experts testifying in class discrimination cases in the country, ran conducted
11 sophisticated statistical analyses to isolate the effect of ethnicity on base pay and incentive compensation,
12 and to quantify Kaiser's alleged class-wide exposure. (*Id.* at p. 2, Exh. A.)²

13 As set forth below (see *infra*, Section V.A) and in the Declarations of Bryan Schwartz, Robert
14 Schug, and Kelly Dermody filed herewith, throughout the negotiation and informal discovery period
15 leading to the proposed Class Settlement in this case, Plaintiff's Counsel worked closely with counsel for
16 plaintiffs in *Stewart, et al. v. Kaiser Permanente* (S.F. Superior Court, Case No. CGC-21-590966) a
17 putative class action alleging that Kaiser has engaged in a pattern or practice of compensation and
18 promotion-related discrimination against Black/African-American employees in jobs similar to those
19 encompassed by the proposed Class in this case. Although the *Stewart* case was docketed on April 22,
20 2021 (after the present action), the *Stewart* plaintiffs and their counsel, highly-experienced employment
21 class action litigators, had been engaged in pre-suit negotiations with Kaiser for more than two years, and
22 had also investigated claims involving Latinx workers. (Declaration of Kelly Dermody ["Dermody
23 Decl."], ¶¶ 4-9.) Coordinating and sharing information with counsel for the *Stewart* plaintiffs enabled
24 Plaintiff's Counsel to engage in more informed and efficient negotiations on behalf of the putative Class
25 in this action and enabled both sets of counsel to maximize the recovery for the classes they seek to
26 represent and strengthen the non-monetary (programmatic relief) that would inure to the benefit of the
thousands of employees in both cases. (Dermody Decl., ¶¶ 8-9; Schug Decl. ¶¶ 9-10.)

27 ² Defendants have informed Plaintiff that they do not agree with the methodologies Dr. Vekker used to
28 conduct his statistical analyses but, for purposes of the proposed Settlement only, have agreed not to
oppose Plaintiffs' characterization of and reliance on his analyses.

1 Following months of investigation and informal discovery, the Parties negotiated a class
2 settlement, including monetary and non-monetary terms, which was executed on April 19, 2021.
3 (Schwartz Decl., ¶ 9.)³ Plaintiff now moves, unopposed, for preliminary settlement approval.

4 **III. OVERVIEW OF THE SETTLEMENT**

5 The complete terms of the Settlement are set forth in the Class and PAGA Representative Action
6 Settlement and Release. (Schwartz Decl., Exh. A). The essential terms are summarized below.

7 **A. Settlement Class Definition**

8 The class to be certified for settlement purposes (“Settlement Class” or “Class”) is defined as
9 follows: Hispanic or Latinx employees employed full-time by Kaiser Foundation Health Plan, Inc., Kaiser
10 Foundation Hospitals, The Permanente Medical Group, Inc., or Southern California Permanente Medical
11 Group in California (“Kaiser-Related Entities”) in a Class-Covered Job in any of the following Regions
12 at any time between June 17, 2016 and March 31, 2021: Northern California (NCAL); Southern California
13 (SCAL); California locations of the Program Offices Region; and California locations of the KP-IT
14 Region. (Settlement, § III.A.27.) A “Class-Covered Job” means a full-time exempt or non-exempt, non-
15 union, non-clinical, Director-level or below job in the job families and job codes listed in Appendix 1 to
16 the Settlement Agreement. (*Id.* § III.A.10.) “Class-Covered Jobs” are in the Administrative Support and
Consulting Services job families, as well as some additional related jobs at the Kaiser-Related Entities.

17 **B. Monetary Terms**

18 The Settlement calls for payment by Defendants of the Settlement Sum of \$7,372,586, which,
19 contingent upon Court approval, will be allocated as follows: 30% to Class Counsel’s attorneys’ fees
20 (\$2,211,775.80); reasonably-incurred litigation costs not to exceed \$30,000; a service award for the
21 Plaintiff of \$75,000; settlement administration costs not to exceed \$27,000; payment to the Labor
22 Workforce Development Agency of \$55,294.50; and \$50,000 set aside as a contingency fund to effectuate
23 the purposes of the settlement.⁴ (Settlement, § X.A.) The remaining amount, which would be

24 ³ After executing the class Settlement Agreement, the Parties mediated and separately settled Plaintiff’s
25 individual retaliation-focused claims, outside the scope of the class claims, with the help of Hon. Ellen
Sickles James (Ret.). (Schwartz Decl. ¶ 10.))

26 ⁴ The idea of the contingency fund is to be available to compensate any newly-discovered class members
27 inadvertently omitted from the initial class list, or whose projected compensation understated the
28 compensation they should receive based upon a data error. (Schwartz Decl., ¶ 13; Settlement § X.A.f) If
any amount of this fund is unnecessary to fulfill the settlement terms, it will be distributed to the class
members with their allocations. (*Id.*)

approximately \$4,923,515.70, will be allocated to the “Settlement Award Fund” for distribution by the Settlement Administrator to participating Settlement Class Members. (*Id.* § X.A.g.) The Settlement Administrator will distribute the Settlement Award Fund to Settlement Class Members based on an allocation formula, described in more detail in Section V(B) below. Defendants will also pay the employer’s share of payroll taxes on the wage portion of Settlement Class Members’ payments. (*Id.* § X.G.2; *see infra*, section III.E.)

Defendants will have ten days after the Effective Date of the settlement to pay the Settlement Sum. (Settlement, § X.A.) Class Members will have ninety days to cash their checks. (*Id.* § X.E.1.) Thirty days prior to the check cashing deadline, the settlement administrator will attempt to contact any class members who have not cashed their checks. (*Id.*) If more than \$100,000 of settlement checks remain uncashed 90 days after mailing, the Settlement Administrator will issue a second distribution to those Settlement Class Members who cashed their checks. (*Id.* § X.E.2.) That distribution will also carry a 90-day check cashing deadline. (*Id.*) If less than \$100,000 of settlement checks are uncashed, or any of the second checks are uncashed after 90 days, such checks will be voided and the amount will be allocated to Legal Aid at Work, a suitable *cy pres* recipient, subject to Court approval. (*Id.*)

C. Non-Monetary Programmatic Relief

The Settlement also contemplates significant programmatic relief (business practice changes) addressing pay equity and promotional opportunities at Kaiser, including but not limited to:

- **Job Analysis.** Defendants will retain APTMetrics, an independent industrial organizational psychology expert, to conduct a thorough job analysis and job grouping review within one to three years. This analysis and review will enable Kaiser to identify and group jobs to be compared in annual pay equity audits described below.
- **Pay Practices.** Beginning one year after the Effective Date and continuing for three annual cycles thereafter, Defendants will retain an independent compensation expert, approved by the Parties, to analyze annually (1) base pay, (2) incentive pay, and (3) merit increase awards for Class-Covered Jobs to ensure that persons who perform substantially similar work are being paid equitably. Defendants will pay for this expert and report the results to Class Counsel. If the pay equity analyses reveal that Latinx or Hispanic employees are underpaid in base pay, incentive pay, or merit increase awards, Defendants will adjust the base, incentive, or merit pay upwards, with any owed backpay.
- **Promotion Practices.** Within 18 months of the Effective Date of the Settlement, APTMetrics will incorporate the job analysis work into job descriptions and promotion selection criteria, and develop training for managers in the use of this criteria for decision making. Defendants will monitor promotion data for any patterns of disparate outcomes for Hispanic/Latinx employees and

share the results of that monitoring with Class Counsel. If the data reveal any disparate impact, Defendants will further investigate to determine any potential root causes of the discrepancies.

- **Career Development.** APTMetrics will identify career tracks and develop career guides for Defendants to implement with 18 months of the Effective Date of the Settlement.
- **Manager Development.** APTMetrics will review and provide expert guidance on leadership development, mentorship programs, and building a diverse bench of employees for management positions and other leadership roles, including ways to facilitate managers' understanding of and demonstrated capacity to consistently apply diversity, equity, and inclusion ("DEI") practices.
- **Personnel Processes Training.** 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) preventing and addressing harassment, (d) other issues related to equal employment opportunity (EEO) and unconscious bias. Defendants will embed automatic prompts in its software to ensure guardrails for equity are observed during the hiring and compensation process.
- **Diversity, Equity, and Inclusion.** Defendants will implement (or have already implemented) programs aimed at promoting and continually improving DEI in the workplace.
- **Public Statements.** Defendants will issue (or have issued) internal statements regarding the impact of societal racism on public health. Defendants will also enhance the Kaiser Permanente Internet home page with public statements regarding its commitment to DEI.
- **Investigations.** Defendant Kaiser Foundation Health Group will increase and maintain its EEO investigation unit staffing to at least fifteen investigators. The investigators will receive more in-depth de-biasing training and will be encouraged to read specifically-identified literature.
- **Complaint Audit.** Defendants will conduct an annual audit of EEO complaints for trends and potential repeat issues, and take remediation measures if necessary. (Settlement Exh. B.)

The Settlement Agreement appoints a Compliance Monitor to ensure implementation of the business practice changes, and requires semi-annual reporting to Class Counsel. (Settlement Exh. B.) Kaiser estimates the implementation of the programmatic relief will entail at least \$2 million in internal costs. (Dermody Decl. ¶ 9.) These measures put racial equity front and center within the company and will help to advance a workplace culture that is inclusive and positive for Hispanic and Latinx employees. In addition, Kaiser's culture change training program, *Belong@KP*, will cost an additional \$7 million over the three years of the Settlement monitoring period. (*Id.*) This programmatic relief, which implements systems enhancements to ensure that Hispanic/Latinx employees earn and advance at the same rate as their non-Hispanic peers and that racial equity remains a focus, provides significant value to Class Members and other employees. (*Id.*; see also Schug Decl. ¶¶ 10-11.)

1 **D. Reasonable Scope of Release of Claims**

2 Class Members will have 45 days after the Notice of the Settlement is mailed to the Class to
3 exclude themselves from (“opt out” of) the Settlement. (Settlement, § V.C.7.) All Class Members who
4 do not timely opt out of the Settlement will release all claims arising from the operative Complaint,
5 pursuant to Section VI of the Settlement.

6 **E. Tax Treatment**

7 For tax purposes, one third of Individual Settlement Awards will be attributable to lost wages in
8 connection with the claims alleged during the Class Period and will be subject to all applicable tax
9 deductions and withholdings. This portion will be reported on an IRS Form W2. (Settlement, § X.G.2.)
10 The remaining two thirds of Claimants’ Awards will not be subject to tax deductions or withholdings, and
11 an IRS Form 1099 will be issued for this amount. (*Id.*)

12 **F. Notice**

13 Defendants will provide Class Members’ information to the Settlement Administrator and Class
14 Counsel within five days after Preliminary Approval, and the Notice will be sent to each Class Member
15 via first class mail and email by the Settlement Administrator within fifteen days after Defendants provide
16 contact information. (Settlement, § V.B.) If the Court approves, the Notice will be substantially in the
17 form of the proposed Notice attached as Exhibit A to the Settlement Agreement. The proposed notice
18 envelope is Exhibit D to the Agreement. After Notice of the Settlement is mailed, Class Members will
19 have 45 days to submit written objections to the Settlement. (*Id.* § V.C.7.) Class Members who believe
20 they were denied a promotion may submit an Enhancement Claim Form (Settlement, Exh. C) to be eligible
21 for an increased settlement award. (*Id.* § X.C.)

22 **IV. THE CLASS MEETS ALL THE REQUIREMENTS FOR CLASS CERTIFICATION**
23 **UNDER CODE OF CIVIL PROCEDURE 382.**

24 Under Code of Civil Procedure section 382, a class may be certified if: (1) it is ascertainable and
25 its members are too numerous for joinder to be practical; (2) the representative and absent class members
26 share a community of interest and questions of law and fact common to the class predominate over
27 questions unique to individual class members; (3) the representative’s claims are typical of the class’
28 claims; and (4) the representative will fairly and adequately represent the class’ interests. (See, e.g.,
Richmond v. Dart Indus., Inc. (1981) 29 Cal.3d 462, 470.)

1 California law and policy favor the fullest and most flexible use of the class action procedure, so
2 any doubts as to the appropriateness of certification should be resolved in favor of certification. (*See Sav-*
3 *On Drug Stores, Inc. v. Superior Court* (2004), 34 Cal. 4th 319, 329 [public policy in favor of class
4 actions]; *Richmond*, 29 Cal.3d at 473-74 [same].) “[I]t is also well established that trial courts should
5 use different standards to determine the propriety of a settlement class, as opposed to a litigation class
6 certification. Specifically, a lesser standard of scrutiny is used for settlement cases.” (*Global Minerals &*
7 *Metals Corp. v. Super. Ct.* (2003) 113 Cal.App.4th 836, 859 [citing *Dunk v. Ford Motor Co.* (1996) 48
8 Cal.App.4th 1794, 1807 & fn.19].) As the court noted in *Dunk*, although certification requirements are
9 intended “to protect the interests of the non-representative class members,” that concern is “protected by
10 the trial court’s fairness review of the settlement.” (*Dunk*, 48 Cal.App.4th at p. 1807 n.19.)

11 **A. The Class Is Objectively Ascertainable.**

12 A class is “ascertainable if it identifies a group of unnamed plaintiffs by describing a set of
13 common characteristics sufficient to allow a member of that group to identify himself as having a right to
14 recover.” (*Harper v. 24 Hour Fitness, Inc.* (2008) 167 Cal.App.4th 966, 977.) This requirement is met,
15 because the Class Covered Jobs and Class Period are defined, and Kaiser has already identified potential
16 Class Members in the datasets it has produced to Plaintiff’s Counsel.

17 **B. The Class Is Sufficiently Numerous.**

18 Given that there are approximately 2,500 Class Members, including the Named Plaintiff. The Class
19 is more than sufficiently numerous. (*See Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695.)

20 **C. Common Questions Predominate Over Individual Questions.**

21 The commonality requirement is met if there are questions of law or fact common to the class.
22 (*Williams v. Sup. Ct.* (2013) 221 Cal.App.4th 1353, 1369 (2013) [a single common question can create
23 commonality].) A question of law or fact is common to the members of a class if it may be resolved
24 through common proof. (*See, e.g., Jaimez v. Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1305.) As
25 for predominance, it “is a comparative concept, and the necessity for class members to individually
26 establish eligibility and damages does not mean individual fact questions predominate.” (*Sav-On*, 34
27 Cal.4th 319, 334 [internal quotations and citations omitted].)

28 Here, Plaintiff asserts that common questions include, but are not limited to: (1) whether Kaiser
paid Hispanic/Latinx employees less than non-Hispanic/Latinx employees performing substantially

1 similar work; (2) whether Kaiser’s compensation and/or promotion policies and procedures have an
2 adverse impact on its Hispanic/Latinx employees; and (3) whether Kaiser intentionally discriminated
3 against Hispanic/Latinx employees in terms of pay and promotions. Plaintiff further asserts that these
4 questions can be resolved through common proof concerning Kaiser’s uniform pay and promotion policies
5 and its common workforce data which may be analyzed for statistical trends. These are exactly the types
6 of common evidence approved by California courts. (*See Brinker Rest. Corp. v. Superior Court* (2012)
7 53 Cal.4th 1004, 1033 [“Claims alleging that a uniform policy consistently applied to a group of
8 employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable
9 for class treatment.”]; *Jaimez v. Daiohs USA, Inc.*, 181 Cal.App.4th at 1298 [“California courts consider
10 ‘pattern and practice evidence, statistical evidence, sampling evidence, expert testimony, and other
11 indicators of a defendant’s centralized practices in order to evaluate whether common behavior towards
12 similarly situated plaintiffs makes class certification appropriate.”].) Plaintiff alleges common facts,
13 satisfying this element of Section 382: ⁵

14 **Compensation:** Plaintiff asserts that all Class Members are subject to the same compensation
15 guidelines and practices. (SAC ¶¶ 25–32.) Decisions related to increasing pay formulas are centralized
16 within Kaiser’s central administrative offices based in its Oakland headquarters. (*Id.* ¶ 27, 29, 31.)
17 Plaintiff’s expert conducted regression analyses to isolate the effect of ethnicity on base pay and incentive
18 compensation, and to measure class-wide disparity, based upon extensive, commonly-maintained
19 compensation and other employment data. (Vekker Decl. at p. 2.) He preliminarily found that the total
20 gap for Class Members, as compared to others in the Class-Covered Jobs, between base pay, incentive
21 compensation, promotions, and initial grade is roughly in the range of \$17-\$18 million without interest.
22 (*Id.*) For example, Plaintiff’s expert also found that Exempt Class Members were, on average, paid
23 approximately 4.2% less than their non-Hispanic/Latino counterparts in certain Kaiser entities, while
24 Non-Exempt Class Members were, on average, paid approximately 1.6% less than their non-
25 Hispanic/Latino counterparts in those entities.⁶ (Schwartz Decl. ¶ 12.) The Class monetary relief formula
26 reflects the relative difference in these numbers. (*Id.*)

26 ⁵ Defendants have informed Plaintiff that they dispute these allegations but, for purposes of the proposed
27 Settlement only, do not oppose this Motion.

27 ⁶ Where there are common questions of liability across the class, individualized issues regarding the
28 amount of damages do not defeat a class action. (*See, e.g., Faulkinbury v. Boyd & Associates, Inc.* (2013)
216 Cal.App.4th 220, 232-340 (disapproved of on other grounds by *Noel v. Thrifty Payless* (2019) 7

1 **Promotion:** Plaintiff asserts that Kaiser’s promotion policies are also common to the Class,
2 centrally determined and uniformly applied throughout California. (SAC ¶¶ 25–32.) When determining
3 the salary increase an employee will receive as a result of a promotion, Kaiser applies a common policy
4 which considers the employee’s pay with regard to uniform performance evaluation systems, and by
5 comparing others of the same job code, using what is known as the “compa-ratio,” among other factors.
6 (*Id.* ¶ 28, 32.) As a result, Plaintiff alleges Hispanic/Latinx employees across the Class have not been
7 promoted in the same manner as non-Hispanic/Latinx employees in Kaiser’s common promotion system.
8 (*Id.*, ¶ 26.)

9 **D. Plaintiff Is Typical of the Class.**

10 Typicality “requires a showing that the class representative has claims or defenses typical of the
11 class.” (*See, e.g., Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069.) “Typicality refers to the
12 nature of the claim or defense of the class representative, and not to the specific facts from which it arose
13 or the relief sought. . . .” (*Martinez v. Joe’s Crab Shack Holdings* (2014) 231 Cal.App.4th 362, 375
14 [quotation marks and citations omitted].)

15 Like Class Members, Plaintiff worked for Kaiser in a full-time, non-clinical, non-union position
16 during the relevant time period and asserts he was subject to the same policies and procedures that applied
17 to the Class. (SAC ¶ 12.) In addition, Plaintiff asserts he is subject to the same common defenses arising
18 from Kaiser’s common pay and promotion policies. Plaintiff and Class Members were subject to the same
19 or similar injuries, namely, being underpaid or under-promoted, comparatively. Plaintiff asserts that
20 typicality is satisfied.

21 **E. Plaintiff Will Adequately Represent the Class.**

22 Plaintiff is represented by counsel qualified to conduct the litigation and the plaintiffs’ interest in
23 the litigation is not antagonistic to the class’s interests. (*McGhee v. Bank of America* (1976) 60 Cal.App.3d
24 442, 451.) Plaintiff’s attorneys collectively have extensive experience in employment litigation, including
25 numerous class actions. (Schwartz Decl. ¶¶ 2-4; Schug Decl. ¶¶ 1-8, Exh. A.) Plaintiff has no conflict of
26 interest with Class Members and agreed to put their interests first. (Schwartz Decl. ¶ 14.) He has
27 demonstrated his dedication to the Class, participating in all aspects of the case, including numerous

28 Cal.5th 955); *Jones v. Farmers Ins. Exchange* (2013) 221 Cal.App.4th 986, 997; *Benton v. Telecom
Network Specialist, Inc.* (2013) 220 Cal.App.4th 701, 726.)

1 meetings and calls, collecting factual information, and spending hours assisting Class Counsel in
2 proposing and evaluating the non-monetary relief. (*Id.* ¶ 15; Schug Decl. ¶ 11.) Furthermore, Plaintiff
3 drafted a report which he provided to the highest levels of the company detailing his concerns about pay
4 equity and promotion practices, exposing himself (he alleged) to retaliation. (Schwartz Decl. ¶ 15.)
5 Plaintiff is capable of “vigorously and tenaciously protect[ing] the interests of the class.” (*Simons v.*
6 *Horowitz* (1984) 151 Cal.App.3d 834, 846.)

7 **F. A Class Action Is Superior to Other Alternatives.**

8 A class action would be vastly superior in this case to the alternative of each Class Member
9 bringing individual claims to remedy Kaiser’s alleged common policies and procedures. “Generally, a
10 class suit is appropriate when numerous parties suffer injury of insufficient size to warrant individual
11 action and when denial of class relief would result in unjust advantage to the wrongdoer.” (*Linder v.*
12 *Thrifty Oil Co.* (2000) 23 Cal.4th 446, 447.) Plaintiff asserts that a class action is superior here because
13 the Class Members’ claims have significantly overlapping factual issues, and if Class Members did bring
14 individual claims, it would increase the delay and expense to all parties and multiply the burden on the
15 judicial system. Participating in the Class allows Class Members to vindicate their claims and receive
16 immediate relief without having to bring individual lawsuits. Second, Class Members will benefit from
17 remaining anonymous, rather than risking retaliation by bringing a lawsuit challenging their employers’
18 actions in their own names. Finally, Class Members will benefit from the widespread programmatic
19 changes provided for in the Settlement—a result that likely would not have been possible without the
20 power of a collective.

21 In addition, Plaintiff asserts that the Class is manageable. Third party administrator JND Legal
22 Administration will provide Notice of the Settlement to the Class Members and distribute settlement funds
23 based on a common formula. (*Six Mexican Workers v. Arizona Citrus Growers* (9th Cir. 1990) 904 F.2d
24 1301, 1304.) This case meets all the requirements for settlement certification.

25 **V. THE PROPOSED SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE
26 AND SHOULD BE APPROVED.**

27 California courts favor settlement. (*E.g., Stambaugh v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236.)
28 Unlike most settlements, class action settlements involve a court approval process that exists to prevent
fraud, collusion, and unfairness to class members. (*Malibu Outrigger Bd. of Governors v. Super. Ct.*

(1980) 103 Cal.App.3d 573, 578–579.) The purpose of the preliminary evaluation of a proposed class action settlement is to determine only whether the settlement is within the range of possible approval, and thus whether notice to the class of the settlement terms and conditions and the scheduling of a formal fairness hearing are warranted. (*Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 234–235, 251.)

A settlement is presumptively fair where it is reached through arm’s-length bargaining, based on enough discovery and investigation to allow counsel and the court to act intelligently, counsel is experienced in similar litigation, and the percentage of objectors is small. (*Dunk*, 48 Cal.App.4th at 1802.) The following “well-recognized factors” may be considered when evaluating the reasonableness of a proposed settlement: (1) the strength of plaintiffs’ case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of government participants; and (8) the reaction of the class members to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.)⁷ At preliminary approval, “the settlement need only be potentially fair, as the court will make a final determination of its adequacy at the hearing on final approval, after such time as any party has had a chance to object and/or opt out.” (*Acosta v. Trans Union* (C.D. Cal. 2007) 243 F.R.D. 377, 386.) Courts approve settlements even where Class Members receive only nominal recovery or vouchers. (*See, e.g., Nordstrom Commission Cases* (2010) 186 Cal.App.4th 576, 590 [affirming final approval of wage and hour class action settlement where 20% of the fund allocated to the class was merchandise vouchers].)

A. The Settlement Was Negotiated at Arm’s Length.

After initiating discovery requests and noticing depositions in August and September 2020, the Parties agreed to pause formal discovery in order to pursue settlement negotiations. (Schwartz Decl., ¶¶ 5-6.) Beginning in early November 2020, Plaintiff’s Counsel engaged with counsel for Defendants and worked in coordination with counsel for plaintiffs in the *Stewart* matter to develop a framework and obtain the discovery necessary to assess the value of the Class claims in this case. (Schwartz Decl. ¶ 7; Dermody Decl. ¶ 8; Schug Decl. ¶ 10.) Counsel for plaintiffs in both cases worked together to identify and share information about the common challenged employment policies and practices in this action and the

⁷ There is no government participant in the case, and the reaction of class members to the settlement will be known at final approval. The remaining *Kullar* factors are addressed in the analysis below.

1 *Stewart* matter, including information gleaned from manuals, guidelines, handbooks, tools, and training
2 materials concerning compensation, job analysis, promotions, career progression and management
3 development, performance reviews, discrimination complaint processes and investigations, workplace
4 surveys, and personnel action changes. (Dermody Decl. ¶¶ 4-8.) Counsel for the *Stewart* plaintiffs had
5 reviewed these policy-related documents, many of which were known to Plaintiff Cuenca, and conducted
6 in-depth interviews with four Kaiser managers regarding the Company's compensation policies,
7 promotion policies, and performance reviews. (*Id.* ¶¶ 4-6.) Plaintiff's Counsel and counsel for the *Stewart*
8 plaintiffs shared information and conferred with one another concerning the alleged common policies and
9 practices being challenged in these actions, relevant findings from Plaintiff Cuenca's study, and other
10 matters, in order to ensure that the programmatic relief was designed to effectively address the underlying
11 issues raised and to maximize the potential recovery to the putative classes in each case. (Schwartz Decl.,
12 ¶ 7; Dermody Decl., ¶ 8; Schug Decl. ¶¶ 9-10.)

13 After the Parties agreed to pause formal discovery, Plaintiff and his Counsel obtained extensive
14 informal discovery, including data and analyses comparing class members' pay and promotions with those
15 of similarly-situated, non-class members. (Schwartz Decl., ¶ 8.) Over the course of several months,
16 Defendants produced multiple rounds of pay data, which Plaintiff's expert, Dr. Vekker, performed
17 complex statistical analysis. (*Id.*; Vekker Decl. at p. 2-3.) When Plaintiff's counsel raised questions about
18 the jobs to be included in the Class and the duration of the class period, Kaiser produced additional data
19 and the Parties continued to engage in arm's length negotiations, resulting in an expanded class and longer
20 class period, and involving a larger settlement. (Schwartz Decl. ¶ 8.)

21 The Parties were well-equipped to negotiate a settlement with an understanding of the amount in
22 controversy and the realistic range of outcomes of the litigation. (*Kullar*, 168 Cal.App.4th at 120.)
23 Through these negotiations, the Parties resolved Class monetary terms and agreed on non-monetary terms
24 (programmatic relief) in the form of business practice changes that address Plaintiff's class allegations
25 and are designed to promote DEI at Kaiser, benefiting thousands of current and future employees. (Schug
26 Decl., ¶¶ 9-11.) The Settlement was thus the product of arm's-length negotiations, based on thorough
27 evaluation of the factual and legal issues. (*Kullar*, 168 Cal.App.4th at 118.) In Plaintiff's Counsel's
28 experienced view, this settlement offers substantial monetary and non-monetary benefit to the class, and
it warrants preliminary approval. *See id.* at 128 (experience and views of counsel relevant).

B. The Settlement Amount is Fair and Reasonable in View of the Strengths and Weaknesses of the Claims Asserted and Risks of Continued Litigation.

The *Kullar* factors weigh the strength of Plaintiff’s case and the amount recovered in settlement against the risk, expense, and duration of continued litigation and the risk of maintaining class certification. (*Kullar*, 168 Cal.App.4th at 128.) Here, the Settlement achieves the goals of litigation—ensuring that Kaiser makes long-lasting changes towards equity and inclusion and providing millions of dollars of monetary relief to those who have been allegedly affected by discrimination. While Plaintiff believes that his claims are strong, as evidenced by pay disparities Plaintiff’s expert identified in the data, Plaintiff recognizes that, absent this settlement, there is a substantial risk that Plaintiff’s recovery would be significantly limited or that Plaintiff would receive no recovery at all for himself or the Class. While Plaintiff’s expert has estimated the maximum wage differential between Hispanic/Latino and non-Hispanic/Latino employees in the Class to be approximately \$17-18 million, Kaiser would contend that, when controlling for variables such as grade and time in job, there is little to no wage differential. Plaintiff’s expert corroborates that, if Plaintiff were unsuccessful in litigation regarding controlling for salary grade in the regression analysis, the differential would be essentially nil. (Vekker Decl. at p. 2).

It would take significant resources and delay in litigating over the particular control variables that should be used to determine whether Hispanic/Latinx employees are performing “substantially similar work” with “mostly similar in skill, effort, responsibility, and performed under similar working conditions” as non-Hispanic/Latino employees. Lab. Code §1197.5. Kaiser would have asserted in litigation that the pay and promotion differentials between Hispanic/Latino and non-Hispanic/Latino employees are due to other bona fide non-race-related factors. Absent settlement, Defendants likely would have asserted a number of arguments that, if litigated on the merits, might make class certification uncertain, including that: pay and promotion decisions are decentralized, compensation policies and procedures vary by market and within and across the organization, and Kaiser’s pay and promotion policies give lower-level managers discretion in compensation decisions. To add to the potential delay of litigation, this case has been pending for over 10 months and does not even currently have a judge assigned – let alone any trial date on the horizon.

Although this case settled early in litigation, “the extent of discovery completed and the stage of the proceedings” (*Kullar*, 168 Cal.App.4th at 128) supports settlement. Defendants produced comprehensive data that allowed Plaintiff to determine potential recovery under a number of scenarios.

1 The reality that Plaintiff could have recovered nothing under certain analytical frameworks provides more
2 support for the settlement than months of written discovery or depositions could offer. Thus, while
3 Plaintiff's and Settlement Class Members' total theoretical maximum recovery is greater than the nearly
4 \$7.4 million settlement amount, "the tangible, immediate benefits of . . . [s]ettlement outweigh continued
5 litigation and the uncertainty of a trial." (*Ebarle v. Lifelock, Inc.* (N.D. Cal., Jan. 20, 2016) 2016 WL
6 234364, at *8 [internal quotation marks and citations omitted].) If Plaintiff maintained a class and
7 prevailed at trial, post-judgment appeals could follow. By way of example, a wage and hour class case
8 against U.S. Bank, filed in December 2001, resulted in a substantial verdict for the plaintiffs in September
9 2008, but was reversed almost six years later by the California Supreme Court on faulty statistical
10 sampling grounds. *See Duran v. U.S. Bank, NA* (2014) 59 Cal. 4th 1, 14. On remand, the trial court denied
11 class certification, and the California Court of Appeal affirmed. *Duran v. U.S. Bank Nat'l Ass'n* (2018)
12 19 Cal.App.5th 630. The matter was refiled in federal court with 160 named plaintiffs, only resolving late
13 in 2018. *See Alila-Katita, et al. v. U.S. Bank, N.A.*, 4:16-cv-03950 (Dkt. #138) (June 11, 2018 dismissal).
14 Here, a protracted battle was likely, absent settlement. Against this backdrop of uncertainty, the \$7.4
15 million fund plus corporate reforms worth millions more are substantial and fall well within the range of
16 possible approval.

17 *1. The Settlement Fairly, Reasonably, and Adequately Compensates Class Members Through a*
18 *Fair Allocation Formula.*

19 Class Members who do not opt out of the settlement will be allocated awards based an objective
20 formula that accounts for their Exempt or Non-Exempt status and total compensation received during the
21 Class Period (calculated by multiplying weeks worked during the Class Period by annual salary during
22 those weeks). (Settlement, § X.D.1–6.) Class Members who submit a promotion enhancement claim form
23 will be eligible for a 10% increase in their settlement amount. (*Id.* at § X.D.3.) This allocation formula is
24 fair, reasonable, and adequately compensates Class Members.

25 First, the formula accounts for the difference in the coefficients of alleged pay disparity between
26 Exempt and Non-Exempt Class Members, which Plaintiff's expert found to be approximately 4.2% and
27 1.6% respectively, by distributing the fund in a 2.5:1 ratio for Exempt and Non-Exempt Class Members.
28 (Settlement, § X.D.2; Vekker Decl. at p. 3) Second, in addition to accounting for the differential in
alleged pay disparity between Exempt and Non-Exempt Class Members, the allocation formula considers

each Class Member's earnings. Finally, Class Members who assert a promotions claim will receive a 10% enhancement of their settlement award. This formula ensures an equitable distribution of settlement funds.

2. *The Proposed Award of Attorneys' Fees and Costs is Fair, Adequate, and Reasonable.*

Plaintiff's Counsel will request an award of attorneys' fees in the amount not to exceed 30% of the Settlement, *i.e.*, \$2,211,775.80 for attorneys' fees. (Settlement Agreement § XI.A.) California courts routinely conclude that an appropriate method for awarding attorney's fees in class actions is to award a percentage of the "common fund" created as a result of the settlement. (*City & County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-11.) The attorneys' fees in this Settlement, constituting 30% of the settlement fund, are below the one-third fee awards that are commonly approved by California Courts. (See, *e.g.*, *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 503 [affirming fee award of one-third of the common fund in a wage and hour class action and recognizing the following advantages in using the percentage method: "relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation."] [internal quotation omitted]; *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one third of the recovery."] [internal quotation omitted].) Plaintiff's counsel have already incurred over 1,000 hours of time uncompensated on this matter, with much more time yet to be expended, such that a lodestar crosscheck will ultimately support the fee award. (*Laffitte*, 1 Cal.5th at 506).

Plaintiff's Counsel will further request an additional amount for reasonably-incurred costs not to exceed \$30,000.00. (Settlement Agreement § XI.A.) These costs cover litigation expenses such as expert's fees. (Schug Decl. ¶ 12.) (Gov. Code §12965, subd. (b) [expert fees allowed under FEHA]; *Anthony v. City of Los Angeles* (2008) 166 Cal. App. 4th 1011, 1016 [same]).

The Court need not rule on Class Counsel's fees and costs now; Plaintiff will file a fee motion will prior to the Final Approval Hearing. A fee award of 30% of the Settlement fund is reasonable and well-justified in consideration of the risks Class Counsel have undertaken in pursuing this case on a contingency basis and the result achieved on behalf of the Class. Plaintiff's Counsel expended significant time and resources on this matter and will continue to do so without additional compensation over the next three years as they oversee implementation of the programmatic relief. (Schwartz Decl. ¶17; Schug Decl. ¶ 12.)

3. *The Proposed Service Award to Plaintiff is Appropriate and Fair.*

Courts routinely approve service awards to compensate named Plaintiff for the services they provide and the risks they incur during class action litigation at similar amounts to that sought here. (See, e.g., *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393-95.) Because there is a “surprising dearth of California authority directly addressing” the size of an appropriate service payment to a class representative such as Mr. Cuenca (*Id.* at 1394), federal authorities should ultimately guide the Court, at final approval, in considering his \$75,000 proposed service award, around 1% of the total common fund. (Settlement, ¶ XI.D.)

The largest service payments are typically awarded in employment discrimination class actions, where an individual’s courage to step forward must be particularly strong, because of risks of blackballing, retaliation, and other negative consequences, and because he or she might have achieved a much greater individual result pursuing an individual settlement or judgment. (See, e.g., *Roberts v. Texaco, Inc.* (S.D.N.Y. 1997) 979 F. Supp. 185, 201; see also, e.g., Nantiya Ruan, *Bringing Sense to Incentives: An Examination of Incentive Payments to Named Plaintiffs in Employment Discrimination Class Actions* (2006) 10 Empl. Rts. & Employ. Pol’y J. 395 (discussing the importance of incentive payments to protecting civil rights and wage and hour rights)). For example, in *McReynolds v. Merrill Lynch*, No. 1:05-cv-6583 (N.D. Ill. Dec. 6, 2013) (Slip Op. at 5), the Court awarded \$250,000 each to class representatives and \$75,000 each to steering committee members – a total of \$4.5 million in service awards from a \$160 million settlement fund (more than 2.8% of the fund). (Schwartz Decl. ¶ 18, Exh. B). The award recipients each submitted a declaration explaining actions on behalf of the class (as Plaintiff will do prior to final approval), and – after notice – none of the class members objected to the awards. (*Id.*) (See also, e.g., *Roberts*, 979 F.Supp. at 203-04 [awarding \$85,000 and \$50,000 to two plaintiffs and significant service awards to others]; *Bellifemine v. Sanofi-Aventis U.S. LLC* (S.D.N.Y. Aug. 6, 2010) No. 07 CIV. 2207 JGK, 2010 WL 3119374, at *7 [awarding \$75,000 service payments to each of the five named plaintiffs and \$25,000 to \$60,000 to non-named plaintiff class members in employment discrimination class action, for roughly 3.6% of the total settlement fund]; *Aviles v. BAE Sys. Norfolk Ship Repair*, No. 2:13-cv-00418 (E.D. Va. Feb. 10, 2016) [provided for the Court’s convenience at Schwartz Decl. ¶ 18, Exh. C awarding \$120,000 service awards to each of four named plaintiffs, all current employees, comprising roughly 10.4% of the \$4.6 million settlement in gender discrimination class action]; *Ingram v. Coca-Cola Co.*

(N.D. Ga. 2001) 200 F.R.D. 685, 694 [approving \$300,000 incentive awards for each of four class representatives in a discrimination case, noting they participated directly in mediation, achieved outstanding settlement, and “took risks, bore hardships, and made sacrifices that absent class members did not”]; *Velez v. Novartis Pharmaceuticals Corp.* (S.D.N.Y. Nov. 30, 2010) 2010 WL 4877852, at **26-27) [granting service awards between \$175,000 and \$425,000 to 26 named plaintiffs, amounts which included compromise of their claims for emotional distress]).

Considering the dedication and engagement Plaintiff demonstrated in surfacing these issues prior to litigation and his leadership in bringing suit and throughout protracted negotiations, spending hundreds of hours in this pursuit, the service award is well justified. (Schwartz Decl., ¶ 16.) Plaintiff also provided significant insight and expertise with regard to the programmatic relief that was rooted in his own professional knowledge of diversity and inclusion programs and racial equity work, warranting the \$75,000 award.

C. The Settlement’s Programmatic Non-Monetary Terms Significantly Benefit the Class.

The Settlement also contemplates significant programmatic relief, described above, which will provide ongoing benefits to the Class Members and to Kaiser employees for years to come. (Schwartz Decl. ¶ 15.) This programmatic relief will help to rectify existing alleged pay disparities Plaintiff asserts are driven by Kaiser’s compensation and promotion policies, protect Hispanic/Latino employees from being paid less than their non-Hispanic/Latino counterparts who perform substantially similar work, and facilitate a more inclusive and equitable work environment. (*Cf. Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1049 [“Non-monetary benefits” to the Class, such as causing the defendant “to change its personnel classification practices,” are “a relevant circumstance” in evaluating a settlement]; *Laguna v. Coverall N. Am., Inc.* (9th Cir. 2014) 753 F.3d 918, 923, *vacated on other grounds*, 772 F.3d 608) [court considers that a settlement contains significant benefits for Plaintiffs beyond the cash recovery, in determining value of settlement]).

VI. THE PROPOSED NOTICE ADEQUATELY APPRISES CLASS MEMBERS OF THEIR RIGHTS UNDER THE SETTLEMENT AND SATISFIES DUE PROCESS

Plaintiff request that this Court approve the proposed notice and administration plan. The standard for determining the adequacy of notice is whether the notice has “a reasonable chance of reaching a

substantial percentage of the class members.” (*Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 974.) Here, notice will be sent by first-class mail, and by email to those for whom Kaiser has an email address. (Settlement, § V.B.3.) This meets the constitutional standards as well as the standards under California Rule of Court 3.766, subds. (d)–(e), and should be approved. (See *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1390.)

With respect to its content, “[The] notice given to the class must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.” (*Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151–152.) Here, the Notice of the Settlement (Settlement, Ex. A.) provides the Class with all pertinent information that they need to fully evaluate their options and exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among other things: (1) what the Settlement is about; (2) that they are a Class Member; (3) how to receive an Individual Settlement Payment; (4) how the Settlement will be allocated; (5) the Class Members’ weeks worked as an exempt and non-exempt employee in the class period; (6) the expected average settlement payments; (7) how Class Counsel will be paid; (8) how to opt out of the Class; and (9) how to object to the Settlement. Accordingly, the Notice should be approved.

VII. CONCLUSION

For the reasons set forth herein, this Court should certify the Class for settlement purposes only under Code of Civil Procedure section 382, preliminarily approve the Settlement, direct that Notice be disseminated to Class Members, schedule a final approval hearing, and adopt the Proposed Order submitted concurrently herewith.

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Respectfully submitted,
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