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28 *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,  
INC., and SOUTHERN CALIFORNIA  
PERMANENTE MEDICAL GROUP; and  
DOES 1 THROUGH 50, INCLUSIVE,

Defendants.

**FILED**  
**ALAMEDA COUNTY**

**OCT 28 2021**

CLERK OF THE SUPERIOR COURT  
By *A. Mendez* Deputy

Case No.: RG20065123

Reservation Numbers: R-2294426, R-2294427

**[PROPOSED] ORDER AND JUDGMENT  
OF FINAL APPROVAL, CERTIFYING  
THE SETTLEMENT CLASS, GRANTING  
FINAL APPROVAL OF CLASS  
SETTLEMENT, AND APPROVING  
ATTORNEYS' FEES, COSTS, COSTS OF  
ADMINISTRATION, AND NAMED  
PLAINTIFF SERVICE AWARD**

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 Notwithstanding Defendants’ stipulation to “Settlement Classes” in this case and to the proposed  
21 Settlement, Defendants continue to deny all allegations of unlawful conduct contained in Plaintiff’s  
22 Second Amended Complaint and prior Complaints, and do not admit or concede that they have, in any  
23 manner, violated federal or California laws prohibiting discrimination and/or retaliation, or committed  
24 any other unlawful action that would entitle Plaintiffs or any class to any recovery. Plaintiff and  
25 Defendants have agreed that, for purposes of settling this case only, it should proceed as a class action  
26 as described below in order that this Settlement will constitute a final and complete adjudication of  
27 the parties’ and Class Members’ rights, liabilities and obligations as set forth in the Settlement.

28 On June 15, 2021, the Court granted preliminary approval to this settlement. The Parties now

1 return to the Court seeking final approval of the settlement after completion of the notice process.  
2 Specifically, Plaintiff has presented to the Court an unopposed Motion for an Order requesting that  
3 the Court certify the Class for settlement purposes only under Code of Civil Procedure section 382,  
4 approve a Service Award to Plaintiff in the amount of \$75,000, approve costs of administration in the  
5 amount of \$49,000, approve Class Counsel's attorneys' fees in the amount of \$2,211,775.80, approve  
6 Class Counsel's costs in the amount of \$16,000, and set a final compliance hearing. The Court has  
7 considered this Motion, the arguments of counsel, and the pleadings and filings in this action. Based  
8 on this consideration and in the interest of justice, the Court hereby FINDS, CONCLUDES, and  
9 ORDERS as follows:

10 **I. CERTIFICATION OF SETTLEMENT CLASS**

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

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

27 Having considered the proposed Settlement Class pursuant to California Code of Civil  
28

1 Procedure § 382, this Court hereby FINDS and CONCLUDES that the proposed Settlement Class  
2 satisfies the requirements of California law for class certification:

3 (a) A class is “ascertainable if it identifies a group of unnamed plaintiffs by describing  
4 a set of common characteristics sufficient to allow a member of that group to  
5 identify himself as having a right to recover.” *Harper v. 24 Hour Fitness, Inc.*  
6 (2008) 167 Cal.App.4th 966, 977. Here, based on the stipulation of the Parties and  
7 materials provided with the unopposed Motion, the Settlement Class definition  
8 precisely defines who is entitled to class relief based on their employer, dates of  
9 work, organizational assignment, jobs/job codes, exempt/non-exempt status, and  
10 demographics. The proposed Settlement Class consist of over 2,560 individuals in  
11 total. Thus, the Settlement Class is sufficiently numerous.

12 (b) The commonality requirement is met if there are questions of law or fact common  
13 to the class. *Williams v. Sup. Ct.* (2013) 221 Cal.App.4th 1353, 1369 (a single  
14 common question can create commonality). When determining commonality, “the  
15 focus must be on the policy the plaintiffs are challenging and whether the legality  
16 of that policy can be resolved on a class-wide basis.” *ABM Indus. Overtime Cases*  
17 (2017) 19 Cal.App.5th 277. Here, based on the stipulation of the Parties and the  
18 materials provided with the unopposed Motion, the Court finds that there are  
19 questions of law or fact that are common to the Settlement Class, and that these  
20 common issues predominate over any individualized questions of law or fact. Such  
21 questions include whether Defendants maintained policies depriving their  
22 Hispanic/Latinx employees equal pay, discriminating against them on the basis of  
23 race and/or national origin with regard to pay and/or promotions, and related  
24 claims. The injunctive and monetary relief in the Settlement resolves these  
25 common issues on a class-wide basis.

26 (c) To satisfy the typicality requirement, the claims of the representative plaintiff(s)  
27 must “possess the same interest and suffer the same injury as the class members.”  
28

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

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

26 (e) The test for determining predominance of common issues is whether the proposed  
27 class is sufficiently cohesive to warrant class-wide adjudication. *Jimenez-Sanchez*  
28

*v. Dark Horse Express, Inc.* (2019) 32 Cal.App.5th 224, 233-34. Based on the stipulation of the Parties and the materials provided with the unopposed Motion, the Court finds that the proposed Settlement Class is cohesive because Class Members share a common nucleus of facts and potential legal remedies.

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

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

## II. APPOINTMENT OF CLASS COUNSEL

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

### III. FINAL APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT, AND APPROVAL OF ATTORNEYS' FEES, COSTS, COSTS

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The Court also approves payment of attorneys' fees in the amount of \$2,211,775.80, which is 30% of the settlement. This amount is within the benchmark percentage regularly approved by this court, and is therefore reasonable. The Court also finds that the amount is reasonable based on a lodestar crosscheck. Class Counsel's requested rates are reasonable. Specifically, the Court approves the following rates:

|                   |       |
|-------------------|-------|
| Bryan Schwartz:   | \$900 |
| Jennifer Reisch:  | \$850 |
| Samuel Goldsmith: | \$550 |
| Natasha Baker:    | \$500 |
| Matthew Helland:  | \$650 |
| Robert Schug:     | \$525 |
| Neil Pederson:    | \$350 |
| Kelly Dermody:    | \$950 |
| Felicia Medina:   | \$850 |

1 The Court also finds that the amount of time billed by Counsel is reasonable. Class Counsel's lodestar,  
2 considering an appropriate amount of time expended by Consulting Counsel Dermody and Medina, is  
3 \$765,783. Given the excellent result for the class in this early settlement, a 2.89 multiplier on the lodestar  
4 crosscheck is reasonable.

5 The Court approves Class Counsel's request for reimbursement of \$16,000 in costs from the  
6 settlement, as these costs were reasonably expended in prosecuting the action. The Court also approves  
7 reimbursement of \$49,000 to the settlement administrator as full payment for work completed to date  
8 and all work necessary to complete the administration of the settlement.

9 Lastly, the Court finds reasonable, and therefore approves, payment of a \$75,000 service award  
10 to the Named Plaintiff for his service to the class in securing this result.

11 It is therefore ORDERED that:

12 (a) The settlement class is CERTIFIED. The Court appointed Bryan Schwartz Law  
13 and Nichols Kaster, LLP as Class Counsel and Plaintiff Michael Cuenca as the  
14 Class Representative.

15 (b) The Settlement Agreement and the class action settlement it embodies is hereby  
16 APPROVED.

17 (c) Class Counsel's request for payment of \$2,211,775.80 in attorneys' fees and costs  
18 from the settlement is APPROVED.

19 (d) The settlement administrator is ORDERED to hold back 10% of the approved  
20 attorneys' fees until completion of the distribution process and shall release them  
21 only upon further order of this Court.

22 (e) Class Counsel's request for reimbursement of \$16,000 in costs from the settlement  
23 is APPROVED.

24 (f) The Court APPROVES payment to the settlement administrator of \$49,000 from  
25 the settlement as full payment for its services in administering the settlement  
26 through completion.

27 (g) The Court APPROVES payment of a \$75,000 Service Award to the Named  
28

Plaintiff from the settlement.

(h) The settlement administrator and the Parties are ORDERED to distribute settlement funds as outlined in this Order and further detailed in the settlement agreement and Plaintiff's submissions to the Court.

(i) The Court sets a compliance hearing for [DATE at least 140 days from the date of this order], prior to which the Parties shall submit a summary accounting of distribution. If there is a second distribution of settlement funds due to the number of uncashed checks, the Parties shall advise the Court and request a continuance of the compliance hearing.

(j) Pursuant to California Rule of Court 3.769(h), the Court retains jurisdiction over the parties to enforce the terms of the judgment.

JUDGMENT IS HEREBY ENTERED.

10-26-2021  
DATED

  
JUDGE

|                                                                                             |  |                                                                                                                                                                                            |
|---------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>SUPERIOR COURT OF CALIFORNIA<br/>COUNTY OF ALAMEDA</b>                                   |  | Reserved for Clerk's File Stamp                                                                                                                                                            |
| COURTHOUSE ADDRESS:<br>Rene C. Davidson Courthouse<br>1225 Fallon Street, Oakland, CA 94612 |  | <b>FILED</b><br>Superior Court of California<br>County of Alameda<br>10/28/2021<br>Chad Finke, Executive Officer / Clerk of the Court<br>By: <u><i>A. Mendola</i></u> Deputy<br>A. Mendola |
| PLAINTIFF/PETITIONER:<br>Michael Cuenca                                                     |  |                                                                                                                                                                                            |
| DEFENDANT/RESPONDENT:<br>Kaiser Permanente et al                                            |  |                                                                                                                                                                                            |
| <b>CERTIFICATE OF MAILING</b>                                                               |  | CASE NUMBER:<br>RG20065123                                                                                                                                                                 |

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Judgment upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Oakland, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

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Dated: 10/29/2021

Chad Finke, Executive Officer / Clerk of the Court  
By:

Chad Finke, Executive Officer / Clerk of the Court

*A. Mendola*

A. Mendola, Deputy Clerk

**CERTIFICATE OF MAILING**