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Attorneys for Defendants KAISER PERMANENTE INTERNATIONAL, SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP, THE PERMANENTE MEDICAL GROUP, KAISER FOUNDATION HOSPITALS, and KAISER FOUNDATION HEALTH PLAN, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

SANDY LIU, on behalf of herself and all others
similarly situated,

Plaintiff,

vs.

KAISER PERMANENTE INTERNATIONAL, a
California corporation; SOUTHERN CALIFORNIA
PERMANENTE MEDICAL GROUP, a California
partnership; THE PERMANENTE MEDICAL GROUP, a
California partnership; KAISER FOUNDATION
HOSPITALS, a California corporation; KAISER
FOUNDATION HEALTH PLAN, INC., a California
corporation; and DOES 1 through 30,

Defendants.

Case No. RG21093802

[Assigned for all purposes to The Honorable
Evelio Grillo, Dept. 21]

**STIPULATION AND SETTLEMENT OF
CLASS AND PAGA REPRESENTATIVE
ACTION**

Action filed: March 9, 2021
Trial Date: None Set

1 Subject to final approval by the Court, which counsel and the Parties agree to diligently
2 pursue and recommend in good faith, Plaintiff Sandy Liu (“Plaintiff”), individually and on behalf of
3 all other similarly situated persons and aggrieved employees and the State of California, on the one
4 hand, and Southern California Permanente Medical Group, Kaiser Foundation Hospitals, The
5 Permanente Medical Group, Inc., and Kaiser Foundation Health Plan, Inc. (“Defendants”), on the
6 other hand (collectively, the “Parties” and individually, a “Party”), hereby agree to the following
7 binding settlement of the class and representative action designated *Liu v. Kaiser Permanente*
8 *International, et al.* (Alameda County Superior Court Case No. RG21093802) and the related writ
9 proceeding in the California Court of Appeal, First Appellate District, Case No. A164337
10 (collectively, the “Action”), pursuant to the terms and conditions set forth below (the “Settlement,”
11 “Settlement Agreement” or “Agreement”). Upon the Effective Date, and the payment by Defendants
12 of all monies due under the Agreement, the Parties shall file a Satisfaction of Judgment with the
13 Court.

14 **I. Definitions.**

15 The following definitions are applicable to this Settlement Agreement. Definitions contained
16 elsewhere in this Settlement Agreement will also be effective:

17 **A. “Action.”**

18 The case entitled *Liu v. Kaiser Permanente International, et al.*, Alameda County Superior
19 Court Case No. RG21093802, and the related writ proceeding in the California Court of Appeal, First
20 Appellate District, Case No. A164337. The Parties agree to jointly request that the Court of Appeal
21 continue its stay of writ proceedings for the purpose of allowing the trial court to approve this
22 Settlement. In the event the Court of Appeal goes forward with oral argument and issues a decision
23 on the writ notwithstanding the Settlement, the Parties agree that any decision will not impact the
24 terms of the Settlement, which shall remain enforceable. Within 10 business days after the
25 Settlement is approved by the trial court and becomes final, Plaintiff will move to dismiss the
26 appellate proceedings.

1 **B. “Amended Complaint.”**

2 Prior to seeking Court approval of the Settlement, Plaintiff will file a first amended complaint
3 to add a cause of action under the Private Attorneys General Act of 2004 (“PAGA”) for the claims
4 exhausted in Plaintiff’s August 10, 2021 notice letter submitted to the Labor and Workforce
5 Development Agency in LWDA Case No. LWDA-CM-840949-21. In amending her complaint,
6 Plaintiff will also dismiss Kaiser Permanente International as a Defendant. Defendants will stipulate
7 to the filing of the amended Complaint.

8 **C. “Attorneys’ Fees and Costs.”**

9 The attorneys’ fees agreed upon by the Parties and approved by the Court for Class Counsel’s
10 litigation and resolution of the Action, and all costs incurred and to be incurred by Class Counsel in
11 the Action, including, but not limited to, costs associated with documenting the Settlement, providing
12 any notices required as part of the Settlement or Court’s Order, securing the Court’s approval of the
13 Settlement, administering the Settlement, any expert expenses, and securing dismissal of the Action.
14 Class Counsel will request attorneys’ fees not to exceed thirty-three and one-third percent (33 1/3%)
15 of the Class Settlement Amount of \$1,715,000, which is a total of \$571,666 (subject to increase as set
16 forth in Section III below), and actual documented costs not to exceed \$10,000. The attorneys’ fees
17 and costs awarded are subject to the Court’s approval. Defendants have agreed not to oppose Class
18 Counsel’s request for attorneys’ fees and reimbursement of costs and expenses as set forth above.
19 Such Attorneys’ Fees and Costs shall be paid from the Class Settlement Amount. Defendants shall
20 have no liability for any other attorneys’ fees or costs. To the extent that the Court approves less than
21 the amount of Attorneys’ Fees and Costs that Class Counsel request, the difference between the
22 requested and awarded amounts will be distributed to Class Members on a proportional basis relative
23 to the size of their claims as set forth in Section VII below. Class Counsel will be issued an IRS
24 Form 1099 for the Attorneys’ Fees and Costs detailed in this Section and shall be solely and legally
25 responsible for paying all applicable taxes on the payment made pursuant to this Section.

26 **D. “Class Counsel.”**

27 Moss Bollinger LLP shall be appointed Class Counsel upon approval by the Court.
28

1 **E. “Class List.”**

2 A complete list of all Class Members that Defendants will diligently and in good faith
3 compile from their records and provide to the Settlement Administrator within fourteen (14) calendar
4 days after Preliminary Approval of this Settlement. The Class List will be formatted in a readable
5 Microsoft Office Excel spreadsheet and will include each Class Member’s full name, most recent
6 mailing address, telephone number, Social Security number, dates of employment (*i.e.*, hire date and
7 termination date, if applicable), whether the employee took a form of paid time off designated as PSL
8 or whether they took a form of paid time off designated as ESL or PTO, and any other relevant
9 information needed to calculate settlement payments.

10 **F. “Class Member(s)” or “Settlement Class.”**

11 All current and former non-union, non-exempt employees of Defendants in the State of
12 California who took a form of paid time off that Defendants aggregated for settlement purposes as
13 PSL, ESL or PTO in any workweek (or beginning in 2021, pay period) in which they received a
14 work-related shift differential or received a work-related shift differential in the pay periods in the
15 prior 90 days from March 9, 2017 through December 31, 2022. It shall be an opt out class.
16 Defendants represent that there are approximately 10,352 Class Members.

17 **G. “Class Period.”**

18 The period from March 9, 2017 through December 31, 2022.

19 **H. “Class Representative Enhancement Payment.”**

20 The amount to be paid to Plaintiff in recognition of her effort and work in prosecuting the
21 Action on behalf of Class Members and for her general release of claims. Subject to the Court
22 granting Final Approval of this Settlement Agreement, Plaintiff will request, and Defendants do not
23 oppose, Court approval of a Class Representative Enhancement Payment in the amount of \$10,000
24 for Sandy Liu. Plaintiff will be issued an IRS Form 1099 in connection with her Class
25 Representative Enhancement Payment. Plaintiff shall be solely and legally responsible for paying
26 any and all applicable taxes on this payment and shall hold Defendants harmless from any claim or
27 liability for taxes, penalties or interest arising as a result of the payment. The Class Representative
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Enhancement Payment will be paid from the Class Settlement Amount and will be in addition to Plaintiff's Individual Settlement Payment paid pursuant to the Settlement and is conditioned on the execution of the general release of claims in Plaintiff's Released Claims, below. Defendants make no representations as to the tax treatment or legal effect of the payment called for herein, and Plaintiff is not relying on any statement or representation by Defendants or their counsel in this regard. To the extent that the Court approves less than the amount of Class Representative Enhancement Payment that Plaintiff requests, the difference between the requested and awarded amounts will be distributed to Class Members on a proportional basis relative to the size of their claims according to the formula set forth in Section VII below.

I. "Class Settlement Amount."

The sum of no more than a Gross Fund Value of \$1,715,000 to be paid by Defendants in full satisfaction of all claims arising from the Action. The settlement will be on a common fund basis, there will be no claim form or claims process and there will be no reversion to Defendants. The Class Settlement Amount includes all Individual Settlement Payments to Class Members, the Class Representative Enhancement Payment to Plaintiff, Settlement Administration Costs to the Settlement Administrator, the Labor and Workforce Development Agency Payment, and the Attorneys' Fees and Costs. Defendants will be responsible for any employer payroll taxes required by law, separate and in addition to the Class Settlement Amount, including the employer FICA, FUTA, and SDI contributions on the wage portion of the Individual Settlement Payments.

J. "Effective Date."

The date on which the Final Award becomes final. For purposes of this Section, the Final Award "becomes final" only after the Court grants the Motion for Final Approval and upon the latter of: (i) final approval of the settlement is granted by the Court and (ii) the Court's Judgment approving the settlement becomes Final. Final shall mean the latest of: (i) if there is an appeal of the Court's Judgment, the date the Judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for review with the California Supreme Court or other court in California assuming jurisdiction of this matter, or, (ii) if a petition for review filed, the date of denial

of the petition, or the date the Court's Judgment is affirmed pursuant to such petition; or (iii) if no appeal is filed, the expiration date of the time for filing or noticing any appeal of the Court's Judgment. If a timely objection to settlement is filed (including an objection from the LWDA), "Effective Date" shall be the later of: (a) the date on which the time for all appeals relating to objections to Settlement and the Final Approval Order has expired; or (b) if an appeal, review or writ is sought relating to an objection or otherwise challenging the terms of the Settlement, the date on which the highest reviewing court renders its decision denying any petition (where the immediately lower court affirmed the judgment) or affirming the judgment. Provided, however, if the California Labor & Workforce Development Agency ("LWDA") has commenced an investigation or issued a Citation prior to the Effective Date, as determined under the forgoing definition, the Effective Date will be extended to the date that the LWDA concludes its investigation or resolves the Citation (whichever is later), or if the LWDA objects to the Settlement, the date when the LWDA's objection to the Settlement is resolved and no longer appealable. It is the intention of the Parties that the Settlement shall not become effective until the Court's Final Order approving the Settlement has become completely final, and no timely recourse remains for an appellant or objector to contest the Settlement.

K. "Final Approval" or "Final Award."

The Court entering an Order Granting Final Approval of the Settlement Agreement.

L. "Individual Settlement Payment."

Each Class Member/PAGA Member's share of the Net Settlement Amount and PAGA Employee Fund, which shall be distributed to the Class Members/PAGA Members, less employee portions of state and federal withholding taxes, including the employee FICA, FUTA and SDI contributions and any other applicable payroll deductions required by law as a result of the payment of the amount allocated to such Class Member as set forth herein.

M. "LWDA Notice."

The Parties agree that Plaintiff will submit Notice to the Labor and Workforce Development Agency ("LWDA") of this Settlement along with a copy of this Settlement Agreement within ten (10)

1 calendar days of its execution by all Parties and Class Counsel, and will thereafter submit a copy of
2 any judgment or any other order (*e.g.*, the Final Award) providing for an award of civil penalties in
3 conformity with Labor Code Section 2699(l).

4 **N. “LWDA Payment.”**

5 The amount that the Parties have agreed to pay to the LWDA in connection with settlement of
6 Plaintiff’s PAGA claims. The Parties have agreed that \$225,000 of the Class Settlement Amount will
7 be allocated to the resolution of any Class Members’ claims arising under the PAGA (“PAGA
8 Settlement Amount”). Pursuant to the PAGA, \$168,750, (75%) of the PAGA Settlement Amount
9 will be paid to the LWDA and \$56,250 (25%) of the PAGA Settlement Amount will constitute the
10 PAGA Employee Fund to be distributed to PAGA Members. Any change in the requested LWDA
11 Payment is not a material term of this Agreement. If the Court approves a lesser or greater amount
12 than that requested, the other terms of this Agreement shall still remain in effect. However, some
13 approval of an LWDA Payment is a material term of the Settlement and this Agreement. If the Court
14 does not approve any LWDA Payment, then the entire Agreement will be, at Defendants’ sole
15 discretion, void and unenforceable. In such a case, the Parties shall be returned to their respective
16 statuses as of the date and time immediately prior to the execution of this Settlement Agreement, and
17 the Parties shall proceed in all respects as if this Settlement Agreement had not been executed, except
18 that the costs of administration shall be borne by Defendants.

19 **O. “Net Settlement Amount.”**

20 The portion of the Class Settlement Amount remaining after deduction of the approved Class
21 Representative Enhancement Payment, Settlement Administration Costs, 75 percent of the PAGA
22 Settlement Amount, and the Attorneys’ Fees and Costs.

23 **P. “Notice of Class Action Settlement.”**

24 The document substantially in the form attached as Exhibit 1 that will be mailed to Class
25 Members’ last known addresses and which will provide Class Members with information regarding
26 the Action and information regarding the Settlement of the Action.
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1 **Q. “Notice of Objection.”**

2 A Class Member’s valid and timely written objection to the Settlement Agreement. For the
3 Notice of Objection to be valid, it must include the objector’s full name, signature, address, telephone
4 number and a written statement of all grounds for the objection accompanied by legal support, if any,
5 for such objection. The Notice of Objection must be returned by mail or fax to the Settlement
6 Administrator at the specified address or facsimile number and postmarked or faxed on or before the
7 Response Deadline. The date of the postmark or fax receipt confirmation will be the exclusive means
8 to determine whether a Notice of Objection has been timely submitted.

9 Class Members who fail to make objections in the manner specified above shall be deemed to
10 have waived any objections and shall be foreclosed from making any objection (whether by appeal or
11 otherwise) to the Settlement Agreement. Neither the Parties nor their counsel will solicit or otherwise
12 encourage Class Members to submit written objections to the Settlement Agreement or appeal from
13 the Order and Judgment. Class Counsel will not represent any Class Members with respect to any
14 such objections to this Settlement. The Settlement Administrator shall provide counsel for the Parties
15 with complete copies of all objections received, including the date of postmark or fax receipt
16 confirmation for each objection, within five (5) business days of receipt. Class Counsel will provide
17 copies of any objections and supporting documents to the Court at least sixteen (16) court days before
18 the Preliminary Approval Hearing. A Class Member who excludes himself or herself from the
19 Settlement shall lose standing to object.

20 **R. “Notice Packet.”**

21 The Notice of Class Action Settlement and Individual Settlement Payment calculations.

22 **S. “PAGA Employee Fund.”**

23 Twenty-five percent (25%) of the PAGA Settlement Amount which will be distributed to
24 PAGA Members.

25 **T. “PAGA Members.”**

26 Class Members who took paid time off designated as PSL, ESL or PTO in any workweek (or
27 beginning in 2021, pay period) in which they received a work-related shift differential or received a
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work-related shift differential in the pay periods in the prior 90 days during the period from November 27, 2019 through December 31, 2022.

U. “PAGA Period.”

The period from November 27, 2019 through December 31, 2022.

V. “Plaintiff.”

Plaintiff Sandy Liu, on behalf of herself and all others similarly situated and the general public.

W. “Plaintiff’s Released Claims.”

Upon the Effective Date, and as a condition of receiving any portion of her Class Representative Enhancement Payment, Plaintiff shall fully and finally release the Released Parties from any and all claims, known and unknown, under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, including but not limited to claims arising from or related to her employment with Defendants and her compensation while an employee of Defendants. Plaintiff’s Released Claims include, but are not limited to, all claims arising from or related to the Action. Plaintiff’s Released Claims include all claims for unpaid wages, including, but not limited to, failure to pay minimum wages, straight time compensation, overtime compensation, double-time compensation, and interest; the calculation of the regular rate of pay; wages related to alleged illegal time rounding; missed meal period and rest-period wages; reimbursement for all necessary business expenses; payment for all hours worked, including off-the-clock work; wage statements; deductions; failure to keep accurate records; unfair business practices; penalties, including, but not limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and attorneys’ fees and costs. Plaintiff’s Released Claims include all claims arising under the Labor Code (including, but not limited to, sections 200, 201, 201.1, 201.3, 201.5, 202, 203, 204, 205.5, 206, 210, 216, 218, 218.5, 218.6, 221, 222, 222.5, 223, 224, 225, 225.5, 226, 226.3, 226.7, 226.8, 227.3, 256, 450, 510, 511, 512, 516, 550, 551, 552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 2698 *et seq.*, 2699 *et seq.*, and 2802); all claims arising under: the Wage Orders of the California Industrial Welfare Commission;

1 the California Private Attorneys General Act of 2004 (PAGA); California Business and Professions
2 Code section 17200, *et seq.*; the California Civil Code, to include sections 3287, 3336 and 3294; 12
3 CCR § 11040; 8 CCR § 11060; California Code of Civil Procedure § 1021.5; the California common
4 law of contract; the FLSA, 29 U.S.C. § 201, *et seq.* and all regulations implementing and interpreting
5 the FLSA, federal common law; and the Employee Retirement Income Security Act, 29 U.S.C. §
6 1001, *et seq.* (ERISA). Plaintiff's Released Claims also include all claims for lost wages and
7 benefits, emotional distress, retaliation, punitive damages, and attorneys' fees and costs arising under
8 federal, state, or local laws for discrimination, harassment, retaliation, and wrongful termination, such
9 as, by way of example only, (as amended) 42 U.S.C. § 1981, Title VII of the Civil Rights Act of
10 1964, the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act
11 (ADEA), and the California Fair Employment and Housing Act (FEHA); and the law of contract and
12 tort. This release excludes the release of claims not permitted by law, including claims related to
13 Workers Compensation.

14 Plaintiff's Released Claims include all claims, whether known or unknown. Even if Plaintiff
15 discovers facts in addition to or different from those that they now know or believe to be true with
16 respect to the subject matter of Plaintiff's Released Claims, those claims will remain released and
17 forever barred. Thus, Plaintiff expressly waives and relinquishes the provisions, rights and benefits
18 of section 1542 of the California Civil Code, which reads:

19 **A general release does not extend to claims that the creditor or releasing party**
20 **does not know or suspect to exist in his or her favor at the time of executing the**
21 **release and that, if known by him or her, would have materially affected his or**
22 **her settlement with the debtor or released party.**

23 **X. "Preliminary Approval."**

24 The Court's order granting preliminary approval of the Settlement Agreement.

25 **Y. "Qualified Settlement Account."**

26 The fund established by the Settlement Administrator pursuant to Internal Revenue Code
27 Section 1.468B-1.
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1 **Z. “Qualifying Paid Leave Days.”**

2 Qualifying ESL/PTO Days and Qualifying PSL days, as those terms are defined in Section
3 VII, *infra*, together constitute Qualifying Paid Leave Days.

4 **AA. “Released Claims.”**

5 As of the date of the Order Granting Final Approval, Class Members who do not opt out shall
6 release Defendants and their present and former affiliates and all of their officers, directors, employees,
7 agents, servants, registered representatives, attorneys, insurers, successors and assigns, and any other
8 persons acting by through, under or in concert with any of them (“Releasees”), from any and all claims,
9 debts, liabilities, demands, obligations, penalties, waiting time penalties, premium pay, guarantees,
10 costs, expenses, attorney’s fees, damages, actions or causes of action of whatever kind or nature,
11 whether known or unknown, contingent or accrued, under any legal theory under federal and state law
12 for the alleged non-payment or underpayment for any time off taken for sick-related reasons, including
13 all reasons covered by the Healthy Workplaces, Healthy Families Act (Cal. Labor Code Section 245 *et*
14 *seq.*) (“HWHFA”), up to and including December 31, 2022. This Release shall include all claims and
15 theories regarding non-payment or underpayment of any time off taken for sick-related reasons
16 (including all reasons covered by the HWHFA) under the California Labor Code, California Business
17 and Professions Code, wage orders, and applicable regulations. The release of claims shall include a
18 Civil Code Section 1542 release as to the released claims only. The release shall run through December
19 31, 2022. For the post-December 31, 2022 period of time, Defendants shall have the option to pay in
20 an additional proportionate amount based on the agreed-upon formula used to calculate the payments
21 made to Class Members and PAGA Group Members.

22 This Agreement is contingent upon the releases by the Plaintiff and the Class Members as
23 described herein, and upon covenants by the Plaintiff and Class Members that they will not
24 participate in any actions, lawsuits, proceedings, complaints or charges in any court or before any
25 administrative body related to any claims they have released under this Agreement.

26 **BB. “Released Parties.”**

27 Defendants and each of their present and former affiliates and all of their officers, directors,
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employees, agents, servants, registered representatives, attorneys, insurers, successors, and assigns, and any other persons acting by, through, under or in concert with any of them.

CC. “Request for Exclusion.”

A notice submitted by a Class Member requesting to be excluded from the Settlement. For the Request for Exclusion to be valid, it must include the Class Member’s full name, signature, address, telephone number and a written statement requesting to be excluded from this Settlement. The Request for Exclusion must be returned by mail, e-mail or fax to the Settlement Administrator at the specified address, e-mail address or facsimile number and postmarked or faxed on or before the Response Deadline. The date of the postmark, e-mail or fax receipt confirmation will be the exclusive means to determine whether a Request for Exclusion has been timely submitted. A Class Member who does not submit a timely and valid Request for Exclusion from the Settlement will be deemed a Class Member and will be bound by all terms of the Settlement Agreement if the Settlement is granted Final Approval by the Court.

Any Class Member who opts out of this Agreement may not submit an Objection and shall not receive any Individual Settlement Payment, and shall not be bound by the releases set forth in this Agreement, except to the extent they are a PAGA Member. A request to be excluded from the Class Settlement shall not serve to exclude PAGA Members from participation in the PAGA Settlement Class. Individuals who opt out shall still be entitled to their share of the PAGA Payment because future PAGA claims are subject to claim preclusion upon entry of the Judgment.

If a Class Member submits both a Request for Exclusion and an Objection, then the Request for Exclusion will be valid and will invalidate the Objection.

DD. “Response Deadline.”

The deadline by which Class Members must mail or fax to the Settlement Administrator valid Requests for Exclusion, Notices of Objection to the Settlement, or Qualifying Paid Leave Day disputes. The Response Deadline will be forty-five (45) calendar days from the initial mailing of the Notice Packet by the Settlement Administrator, unless the 45th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S.

Postal Service is open. The Response Deadline for Requests for Exclusion, Notices of Objection, or disputes will be extended fifteen (15) calendar days for any Class Member who is re-mailed a Notice Packet by the Settlement Administrator, unless the 15th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. The Response Deadline may also be extended by express agreement between Class Counsel and Defendants. Under no circumstances, however, will the Settlement Administrator have the authority to unilaterally extend the deadline for Class Members to submit a Request for Exclusion, Notice of Objection to the Settlement, or Qualifying Paid Leave Day disputes.

EE. “Settlement Administrator.”

Phoenix Class Action Administration Solutions shall be the third-party class action settlement administrator as agreed to by the Parties and approved by the Court for the purposes of administering this Settlement and will issue to class members a form W-2 and 1099 for all amounts paid under this settlement, making all deductions and withholdings required under law. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

FF. “Settlement Administration Costs.”

The costs payable from the Class Settlement Amount to the Settlement Administrator are for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, calculating estimated amounts per Class Member, tax reporting, distributing the Class Settlement Amount, and providing necessary reports and declarations, and other duties and responsibilities set forth herein to process this Settlement Agreement, and as requested by the Parties. The Settlement Administration Costs will be paid from the Class Settlement Amount, including, if necessary, any such costs in excess of the amount represented by the Settlement Administrator as being the maximum costs necessary to administer the Settlement. The Settlement Administration Costs are currently estimated to be approximately \$42,000 based on 10,352 Class Members. To the extent actual Settlement Administration Costs are greater than \$42,000 such excess amount will be deducted from the Class Settlement Amount, subject to the

1 Court's approval. The Settlement Administration Costs will be paid no sooner than fifteen (15)
2 calendar days following the Effective Date.

3 **GG. "Settlement Payment Check."**

4 The payment to Class Members. The back of the Settlement Payment Check shall state that
5 the payment shall be void after 180 days.

6 **II. Funding of the Class Settlement Amount.**

7 Within fourteen (14) calendar days after the Effective Date of the Settlement, Defendants will
8 make a one-time deposit of all approved amounts from the Class Settlement Amount into a Qualified
9 Settlement Account to be established by the Settlement Administrator. Within fourteen (14) calendar
10 days of the funding of the Settlement, the Settlement Administrator will issue payments to: (a) Class
11 Members; (b) the Labor and Workforce Development Agency (LWDA); (c) Plaintiff; and (d) Class
12 Counsel. The Settlement Administrator will also issue a payment to itself for Court-approved
13 services performed in connection with the Settlement. Defendants have no obligation to deposit such
14 funds prior to the deadline set forth herein.

15 **III. Attorneys' Fees and Costs.**

16 Defendants agrees not to oppose any application by Class Counsel for attorneys' fees of not
17 more than \$571,666 plus actual documented costs not to exceed \$10,000. Because Defendants have
18 reserved the option to extend the release period beyond December 31, 2022, by paying in an
19 additional proportionate amount into the Class Settlement Fund based on the agreed-upon formula
20 used to calculate the payments made to Class Members and PAGA Members set forth in Section VII
21 below, if Defendants exercise that option, the Parties agree that Plaintiff's request for attorneys' fees
22 shall increase proportionately to the increase in the Class Settlement Amount.

23 No counsel shall be entitled to attorneys' fees or costs for work performed in the Action other
24 than as provided in this Settlement Agreement. The instant Settlement Agreement is the exclusive
25 means for recovery of attorneys' fees and costs incurred in the Action by any attorney, law firm
26 and/or other legal services provider.

1 **IV. Settlement Administration Costs.**

2 The Settlement Administrator will be paid for the reasonable costs of administration of the
3 Settlement and distribution of payments from the Class Settlement Amount, which are currently
4 estimated to be \$42,000 based on 10,352 Class Members.

5 The Parties hereby acknowledge that the Settlement Administration Costs may increase above
6 the current estimate of \$42,000 based on the actual number of Class Members and that any such
7 additional Settlement Administration Costs that are approved by the Parties' counsel and the Court
8 shall be taken out of the Class Settlement Amount.

9 **V. Labor and Workforce Development Agency Payment.**

10 Subject to Court approval, the Parties agree that \$225,000 of the Class Settlement Amount
11 will be allocated to the resolution of any Class Members' claims arising under the PAGA ("PAGA
12 Settlement Amount"). Pursuant to the PAGA, \$168,750 (75%) of the PAGA Settlement Amount will
13 be paid to the LWDA and \$56,250 (25%) of the PAGA Settlement Amount will be included in the
14 Net Settlement Amount.

15 **VI. Net Settlement Amount.**

16 The Net Settlement Amount will be used to satisfy Individual Settlement Payments to Class
17 Members from the Settlement Class and PAGA Members in accordance with the terms of this
18 Settlement.

19 **VII. Individual Settlement Payment Calculations.**

20 Individual Settlement Payments will be calculated and apportioned from the Net Settlement
21 Amount and PAGA Employee Fund as follows:

22 (a) Class Members shall be allocated one (1) point of credit for each day up to three (3) days
23 per calendar year that the Class Member took a form of paid time off designated in Defendants'
24 records as ESL or PTO in any workweek (or beginning in 2021, pay period) in which they received a
25 work-related shift differential or received a work-related shift differential in the pay periods in the
26 prior 90 days within the Class Period ("Qualifying ESL/PTO Days"); (b) Class Members shall be
27 allocated two (2) points of credit for each day up to three (3) days per calendar year that the Class
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1 Member took a form of paid time off designated in Defendants' records PSL in any workweek (or
2 beginning in 2021, pay period) in which they received a work-related shift differential or received a
3 work-related shift differential in the pay periods in the prior 90 days within the Class Period
4 ("Qualifying PSL Days"); (c) Class Members who experienced a termination during the period of
5 March 9, 2018 through December 31, 2022, shall be allocated an additional five (5) points of credit.
6 Qualifying ESL/PTO Days and Qualifying PSL days are together "Qualifying Paid Leave Days."

7 To calculate each Settlement Class Member's proportional share of the Net Settlement
8 Amount:

- 9 • Add all points of credit for all participating Class Members;
- 10 • Divide the Net Settlement Amount by the total number of points for all
11 participating Class Members to get a per point value;
- 12 • To determine each Class Member's individual share of the Net Settlement
13 Amount, multiply the per point value by each participating Class Member's
14 individual number of points.

15 The PAGA Employee Fund, 25% of the PAGA Settlement Amount, shall be allocated to
16 PAGA Members as follows: PAGA Members shall be allocated one (1) PAGA share for each day up
17 to three (3) days per calendar year that the PAGA Member took a form of paid time off designated in
18 Defendants' records as PSL, ESL or PTO in any workweek (or beginning in 2021, pay period) in
19 which they received a work-related shift differential or received a work-related shift differential in
20 the pay periods in the prior 90 days within the PAGA Period.

21 The Individual Settlement Payment will be reduced by any required deductions for each Class
22 Member as set forth herein, including employee-side tax withholdings or deductions.

23 The Individual Settlement Payments made to Class Members under this Settlement, and any
24 other payments made pursuant to this Settlement, will not be utilized to calculate any additional
25 benefits under any benefit plans to which any Class Members may be eligible, including, but not
26 limited to, profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick
27 leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this
28 Settlement Agreement will not affect any rights, contributions, or amounts to which any Class

Members may be entitled under any benefit plans.

VIII. Settlement Administration Process.

1. The Parties agree to cooperate in the administration of the Settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in administration of the Settlement. The Settlement Administrator will provide the following services:

- a. Establish and maintain a Qualified Settlement Account.
- b. Calculate the Individual Settlement Payment each Class Member/PAGA Member is eligible to receive.
- c. Print and mail the Notice Packet.
- d. Establish and maintain a toll-free information telephone support line to assist Class Members who have questions regarding the Notice Packet.
- e. Conduct additional address searches for mailed Notice Packets that are returned as undeliverable.
- f. Process Requests for Exclusion, calculate Class Members' Individual Settlement Payment, field inquiries from Class Members, and administer any Requests for Exclusion. This service will include settlement proceeds calculation, printing and issuance of Settlement Payment Checks, and preparation of IRS W-2 and 1099 Tax Forms. Basic accounting for and payment of employee tax withholdings and forwarding all payroll taxes and penalties to the appropriate government authorities will also be included as part of this service.
- g. Issuing to Plaintiff, Class Members, and Plaintiff's Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Settlement.
- h. Provide declarations and/or other information to the Court as requested by the Parties and/or the Court.
- i. Provide weekly status reports to counsel for the Parties.

2. Within fourteen (14) calendar days of Preliminary Approval, Defendants will provide the Class List to the Settlement Administrator.

3. Within fourteen (14) calendar days after receiving the Class List from Defendants, the Settlement Administrator will mail a Notice Packet to all Class Members via regular First-Class U.S. Mail, using the last known mailing addresses identified in the Class List.

4. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct any known or identifiable address changes. Any Notice Packets returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Notice Packet. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Class Member involved, and will then perform a single re-mailing. Those Class Members who receive a re-mailed Notice Packet, whether by skip-trace or by request, will have between the later of (a) an additional fifteen (15) calendar days or (b) the Response Deadline to postmark, e-mail or fax a Request for Exclusion or Notice of Objection to the Settlement.

5. All Class Members will be mailed a Notice Packet containing the forms attached as Exhibit 1 as approved by the Court.

6. Class Members will have an opportunity to dispute the information provided in their Notice Packets. To the extent Class Members dispute the number of Qualifying Paid Leave Days they have been credited or the amount of their Individual Settlement Payment, Class Members may produce evidence to the Settlement Administrator showing that such information is inaccurate. Absent evidence rebutting Defendants' records, Defendants' records will be presumed determinative. However, if a Class Member produces evidence to the contrary, the Settlement Administrator will evaluate the evidence submitted by the Class Member and will make the final decision as to the number of Qualifying Paid Leave Days that should be applied and/or the Individual Settlement

1 Payment to which the Class Member may be entitled. The Qualifying Paid Leave Day dispute must
2 be returned by mail, e-mail or fax to the Settlement Administrator at the specified address, e-mail
3 address or facsimile number and postmarked, e-mailed or faxed on or before the Response Deadline.
4 The date of the postmark, e-mail or fax receipt confirmation will be the exclusive means to determine
5 whether a Qualifying Paid Leave Day dispute has been timely submitted. All such disputes are to be
6 resolved not later than fourteen (14) calendar days after the Response Deadline.

7 7. Defective Submissions. If a Class Member's Request for Exclusion is defective as to
8 the requirements listed herein, that Class Member will be given an opportunity to cure the defect(s).
9 The Settlement Administrator will mail the Class Member a cure letter within three (3) business days
10 of receiving the defective submission to advise the Class Member that his or her submission is
11 defective and that the defect must be cured to render the Request for Exclusion valid. The Class
12 Member will have until the later of (a) the Response Deadline or (b) fifteen (15) calendar days from
13 the date of the cure letter, whichever date is later, to postmark, e-mail or fax a revised Request for
14 Exclusion.

15 8. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
16 Settlement Agreement must sign and postmark, e-mail or fax a written Request for Exclusion to the
17 Settlement Administrator within the Response Deadline. The date of the postmark on the return
18 mailing envelope, e-mail or the fax receipt confirmation will be the exclusive means to determine
19 whether a Request for Exclusion has been timely submitted. All Requests for Exclusion will be
20 submitted to the Settlement Administrator, who will certify jointly to Class Counsel and Defendants'
21 Counsel the Requests for Exclusion that were timely submitted. Any Class Member who does not
22 timely seek exclusion will be bound by the terms of this Settlement Agreement. A request to be
23 excluded from the Class Settlement shall not serve to exclude PAGA Members from participation in
24 the PAGA Settlement Class. Individuals who opt out shall still be entitled to their share of the PAGA
25 Payment because future PAGA claims are subject to claim preclusion upon entry of the Judgment.

1 **IX. NULLIFICATION OF THE SETTLEMENT AGREEMENT.**

2 1. Defendants' Option to Nullify the Settlement Agreement. If two percent (2%) or more
3 of the Class Members opt out of the Settlement (or are otherwise excluded), Defendants, in their sole
4 discretion, shall have the option of nullifying the Settlement Agreement. Defendants shall give
5 written notice to Class Counsel within five (5) calendar days after the Settlement Administrator
6 informs the Parties that the opt out rate exceeds two percent (2%). In such a case, the Parties and any
7 funds to be awarded under this Settlement Agreement shall be returned to their respective statuses as
8 of the date and time immediately prior to the execution of this Agreement, and the Parties shall
9 proceed in all respects as if this Settlement Agreement had not been executed, except that any fees
10 already incurred by the Settlement Administrator shall be paid by Defendants.

11 2. Nullification of the Settlement Agreement. In the event: (i) the Court does not enter
12 the Preliminary Approval Order and approve the Released Settlement specified herein; (ii) the Court
13 does not finally approve the Settlement as provided herein; (iii) Defendants exercise their option to
14 nullify the Settlement Agreement based on an excessive number of opt-outs, as described in the
15 above Section; or (iv) the Settlement does not become final for any other reason (*e.g.*, an objection by
16 the LWDA), this Settlement Agreement shall be null and void. Any order or judgment entered by the
17 Court in furtherance of this Settlement Agreement shall be treated as void from the beginning, and
18 the Stipulations and Recitals contained herein shall be of no force or effect, and shall not be treated as
19 an admission by the Parties or their counsel. In such a case, the Parties and any funds to be awarded
20 under this Settlement Agreement shall be returned to their respective statuses as of the date and time
21 immediately prior to the execution of this Settlement Agreement, and the Parties shall proceed in all
22 respects as if this Settlement Agreement had not been executed, except that, in the event of (i), (ii) or
23 (iv) as set forth in this paragraph, any fees already incurred by the Settlement Administrator shall be
24 shared equally.

25 3. Settlement Terms Bind All Class Members Who Do Not Opt Out. Any Class Member
26 who does not affirmatively opt out of the Settlement Agreement by submitting a timely and valid
27
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Request for Exclusion will be bound by all its terms, including those pertaining to the Released Settlement.

X. Certification Reports Regarding Individual Settlement Payment Calculations.

1. The Settlement Administrator will provide Defendants' counsel and Class Counsel a weekly report which certifies: (a) the number of Class Members who have submitted valid Requests for Exclusion; (b) any objections submitted to the Settlement along with a copy of any such objection; and (c) whether any Class Member has submitted a challenge to any information contained in their Notice Packet. Additionally, the Settlement Administrator will provide to counsel for both Parties any updated reports regarding the administration of the Settlement Agreement as needed or requested.

2. Uncashed Settlement Checks. Any checks issued by the Settlement Administrator to Class Members will be negotiable for one-hundred eighty (180) calendar days. After one-hundred eighty (180) calendar days from the date of mailing, the checks shall become null and void, and any monies remaining in the distribution account shall be distributed to California Rural Legal Assistance as a cy pres recipient pursuant to California Civil Procedure Code § 384.

3. Certification of Completion. Upon completion of administration of the Settlement, the Settlement Administrator will provide a written declaration under oath to certify such completion to the Court and counsel for all Parties.

XI. Tax Treatment of Individual Settlement Payments.

All Individual Settlement Payments will be allocated as follows: one-third (1/3) wages, one-third (1/3) interest and one-third (1/3) penalties.

The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to non-wages will be reported on an IRS Form-1099 by the Settlement Administrator. The Gross Individual Settlement Payments will be reduced by any required legal deductions for each Class Member. All standard employee payroll deductions will be made for state and federal withholding taxes, including any other applicable payroll deductions owed by the Class Members as a result of the Wage Component, resulting in a net wage component. The Settlement Administrator

will issue a check and W-2 Form to each Class Member for the wage component. No withholding shall be made on the penalty portions of the Gross Individual Settlement Payment. The Settlement Administrator will issue a second check and IRS Form-1099 for the remaining penalty component. The Settlement Administrator shall be responsible for issuing the payments and calculating and withholding all required state and federal taxes. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Settlement Agreement. Any disputes not resolved by the Settlement Administrator concerning the administration of the Settlement will be resolved by the Court, under the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the dispute without the necessity of involving the Court.

XII. Administration of Taxes by the Settlement Administrator.

1. Tax Liability. Defendants make no representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiff, PAGA Members, and Class Members are not relying on any statement, representation, or calculation by Defendants or by the Settlement Administrator in this regard. Plaintiff, PAGA Members, and Class Members understand and agree they will be solely responsible for the payment of their share of any taxes and penalties assessed on the payments described herein.

2. Circular 230 Disclaimer. EACH PARTY TO THIS SETTLEMENT AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS SETTLEMENT AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS SETTLEMENT AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED

1 EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
2 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
3 SETTLEMENT AGREEMENT, (B) HAS NOT ENTERED INTO THIS SETTLEMENT
4 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY
5 ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY
6 UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO
7 ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
8 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
9 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF
10 ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
11 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
12 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
13 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
14 SETTLEMENT AGREEMENT.

15 **XIII. Release by Class Members.**

16 1. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
17 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
18 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
19 cause of action or right herein released and discharged.

20 2. It is the desire of Plaintiff, Class Members (except those who exclude themselves from
21 the Settlement), and Defendants to fully, finally, and forever settle, compromise, and discharge the
22 Released Claims. Upon the Final Approval by the Court of this Settlement Agreement, and except as
23 to such rights or claims as may be created by this Settlement Agreement, the Class Members shall
24 fully release and discharge the Released Parties from any and all Released Claims for the entire Class
25 Period. This release shall be binding on all Class Members who have not timely submitted a valid
26 and complete Request for Exclusion, including each of their respective attorneys, agents, spouses,
27 executors, representatives, guardians ad litem, heirs, successors, and assigns, and shall inure to the
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benefit of the Released Parties, who shall have no further or other liability or obligation to any Class Member with respect to the Released Settlement, except as expressly provided herein.

XIV. Materiality of Terms.

1. The Court's approval of Class Representative Enhancement Payments, Attorneys' Fees and Costs, and the LWDA Payment are not material terms of this Agreement. If the Court approves only a lesser amount of these payments, then the other terms of this Agreement shall still remain in effect and the difference will remain part of the Net Settlement Amount.

2. Except as otherwise stated herein, each substantive term of this Agreement is material and has been relied upon by the Parties in entering into this Agreement. Any failure by the Court to fully and completely approve the material terms of this Settlement Agreement will result in this Settlement Agreement entered into by the Parties, and all obligations under this Settlement Agreement, being nullified and voided. Upon such failure, any order or judgment entered by the Court in furtherance of this Settlement Agreement shall be treated as void from the beginning, and the Stipulations and Recitals contained herein shall be of no force or effect and shall not be treated as an admission by the Parties or their counsel. In such a case, the Parties and any funds to be awarded under this Settlement Agreement shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Settlement Agreement, and the Parties shall proceed in all respects as if this Settlement Agreement had not been executed, except that any fees already incurred by the Settlement Administrator shall be paid by the Parties as set forth in Section IX herein.

XV. Preliminary Approval Hearing.

1. Plaintiff will obtain a hearing before the Court to request Preliminary Approval of the Settlement Agreement and the entry of a Preliminary Approval Order for: (a) conditional certification of the Settlement Class for settlement purposes only, (b) Preliminary Approval of the proposed Settlement Agreement, and (c) setting a date for a Final Approval/Settlement Fairness Hearing.

2. The Preliminary Approval Order will provide for the Notice Packet to be sent to all Class Members as specified herein. In conjunction with the Preliminary Approval Hearing, Plaintiff will submit this Settlement Agreement and will include the proposed Notice Packet.

3. Class Counsel will be responsible for drafting all documents necessary to obtain Preliminary Approval, but will provide Defense counsel with an opportunity to review and comment on those documents prior to filing them.

XVI. Final Settlement Approval Hearing and Entry of Judgment.

1. Upon expiration of the Response Deadline, and with the Court's permission, a Final Approval/Settlement Fairness Hearing will be conducted to determine the Final Approval of the Settlement Agreement along with the amounts properly payable for: (a) Individual Settlement Payments; (b) the PAGA Settlement Amount; (c) the Attorneys' Fees and Costs; (d) the Class Representative Enhancement Payment; and (e) all Settlement Administration Costs.

2. The Final Approval/Settlement Fairness Hearing will be held no later than forty-five (45) calendar days after the Response Deadline, subject to the Court's calendar.

3. Class Counsel will be responsible for drafting all documents necessary to obtain Final Approval, but will provide Defense counsel with an opportunity to review and comment on those documents prior to filing them. Class Counsel will also be responsible for drafting the Attorneys' Fees and Costs application to be heard at the Final Approval/Settlement Fairness Hearing.

XVII. Judgment and Continued Jurisdiction.

1. The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Settlement Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Settlement Agreement and all orders and judgments entered in connection therewith.

XVIII. Other Provisions.

1. Exhibits Incorporated by Reference. The terms of this Settlement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein. Any Exhibits to this Settlement are an integral part of the Settlement.

1 2. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute
2 the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral
3 agreements may be deemed binding on the Parties.

4 3. Amendment or Modification. This Settlement Agreement may be amended or
5 modified only by a written instrument and that said written instrument need only be signed by
6 counsel for all Parties or their successors-in-interest and approved by the Court.

7 4. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
8 represent they are expressly authorized by the Parties whom they represent to negotiate this
9 Settlement Agreement and to take all appropriate action required or permitted to be taken by such
10 Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other
11 documents required to effectuate the terms of this Settlement Agreement. The Parties and their
12 counsel will cooperate with each other and use their best efforts to effect the implementation of the
13 Settlement. If the Parties are unable to reach agreement on the form or content of any document
14 needed to implement the Settlement, or on any supplemental provisions that may become necessary
15 to effectuate the terms of this Settlement, the Parties may seek the assistance of mediator Michael
16 Diliberto, Esq., to resolve such disagreement.

17 5. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
18 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

19 6. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto
20 will be governed by and interpreted according to the laws of the State of California.

21 7. Execution and Counterparts. This Settlement Agreement is subject only to the
22 execution of all Parties. However, the Settlement Agreement may be executed in one or more
23 counterparts. All executed counterparts and each of them, including facsimile and scanned copies of
24 the signature page, will be deemed to be one and the same instrument.

25 8. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
26 Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at
27 this Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into
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1 account all relevant factors, present and potential. The Parties further acknowledge that they are each
2 represented by competent counsel and that they have had an opportunity to consult with their counsel
3 regarding the fairness and reasonableness of this Settlement.

4 9. Invalidity of Any Provision. Before declaring any provision of this Settlement
5 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
6 possible consistent with applicable precedents so as to define all provisions of this Settlement
7 Agreement valid and enforceable.

8 10. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to
9 class certification for purposes of this Settlement only; except, however, that either Party may appeal
10 any Court order that materially alters the Settlement Agreement's terms.

11 11. Class Action Certification for Settlement Purposes Only. The Parties agree to
12 stipulate to class certification only for purposes of the Settlement. If, for any reason, the Settlement
13 is not approved, the stipulation to certification will be void. The Parties further agree that
14 certification for purposes of the Settlement is not an admission that class action certification is proper
15 under the standards applied to contested certification motions and that this Settlement Agreement will
16 not be admissible in this or any other proceeding as evidence that either: (a) a class action should be
17 certified or (b) Defendants are liable to Plaintiff or any Class Member, other than according to the
18 Settlement's terms.

19 12. Non-Admission of Liability. The Parties enter into this Settlement Agreement to
20 resolve the dispute that has arisen between them and to avoid the burden, expense, and risk of
21 continued litigation. In entering into this Settlement Agreement, Defendants do not admit, and
22 specifically deny, that they have violated any federal, state, or local law; violated any regulations or
23 guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal
24 requirements; breached any contract; violated or breached any duty; engaged in any
25 misrepresentation or deception; or engaged in any other unlawful conduct with respect to their
26 employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the
27 negotiations connected with it, shall be construed as an admission or concession by Defendants of
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any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement Agreement, this Settlement Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendants or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.

13. Captions. The captions and section numbers in this Settlement Agreement are inserted for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of this Settlement Agreement.

14. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

15. Enforcement Action. If one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

16. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one Party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

17. Representation by Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement and that this Settlement Agreement has been executed with the consent and advice of counsel and

1 reviewed in full. Further, Plaintiff and Class Counsel warrant and represent that there are no liens on
2 the Settlement Agreement.

3 18. All Terms Subject to Final Court Approval. All amounts and procedures described in
4 this Settlement Agreement herein will be subject to final Court approval.

5 19. Cooperation and Execution of Necessary Documents. All Parties will cooperate in
6 good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this
7 Settlement Agreement.

8 20. Binding Agreement. The Parties warrant that they understand and have full authority
9 to enter into this Settlement, intend that this Settlement Agreement will be fully enforceable and
10 binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding
11 to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might
12 apply under federal or state law. Plaintiff, and not their respective representative(s), must personally
13 execute this Settlement Agreement.

14 21. No Prior Assignments or Undisclosed Liens. The Class Representative and the Class
15 Counsel represent that they have not assigned, transferred, conveyed, or otherwise disposed of any
16 Released Claim or claim to attorneys' fees and costs award to be paid under this Agreement. The
17 Class Representative and the Class Counsel further represent and warrant that there are not any liens
18 or claims against any amount that Defendants is to pay under this Agreement. The Class
19 Representatives and Class Counsel agree to defend, to indemnify, and to hold Defendants harmless
20 from any liability, losses, claims, damages, costs, or expenses, including reasonable attorneys' fees,
21 resulting from a breach of these representations or from any lien or assignment.

22 22. Confidential Information. Class Counsel will destroy all confidential documents and
23 information provided by Defendants within 60 calendar days after the completion of the
24 administration of this Agreement. Class Counsel further agree that none of the information provided
25 by Defendants shall be used for any purpose other than prosecution of this Action.

26 23. Publicity. Neither Plaintiff nor Class Counsel will publicize the Settlement in any way
27 prior to preliminary approval. Nothing in this Stipulation shall preclude Class Counsel from
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DocuSigned by:

 Plaintiff Sandy Liu

Dated: _____

Dated:

Dated:

Dated:

THE PERMANENTE MEDICAL GROUP, INC.

Please Print Name of Authorized Signatory

communicating with members of the Settlement Class after preliminary approval, and after preliminary approval Class Counsel are permitted to post court-filed documents on their website for viewing by the Settlement Class.

Dated: _____

Plaintiff Sandy Liu

**SOUTHERN CALIFORNIA PERMANENTE
MEDICAL GROUP**

Dated: Aug 20, 2023

Sylvia Everroad
Sylvia Everroad (Aug 20, 2023 21:28 PDT)

Sylvia Everroad

Please Print Name of Authorized Signatory

KAISER FOUNDATION HOSPITALS

Dated: _____

Please Print Name of Authorized Signatory

KAISER FOUNDATION HEALTH PLAN, INC.

Dated: _____

Please Print Name of Authorized Signatory

THE PERMANENTE MEDICAL GROUP, INC.

Dated: _____

Please Print Name of Authorized Signatory

- 30 -

**STIPULATION AND SETTLEMENT OF CLASS
AND PAGA REPRESENTATIVE ACTION**

communicating with members of the Settlement Class after preliminary approval, and after preliminary approval Class Counsel are permitted to post court-filed documents on their website for viewing by the Settlement Class.

Dated: _____

Plaintiff Sandy Liu

**SOUTHERN CALIFORNIA PERMANENTE
MEDICAL GROUP**

Dated: _____

Please Print Name of Authorized Signatory

KAISER FOUNDATION HOSPITALS

Dated: Aug 19, 2023


Janet Liang (Aug 19, 2023 18:54 PDT)

Janet Liang

Please Print Name of Authorized Signatory

KAISER FOUNDATION HEALTH PLAN, INC.

Dated: Aug 19, 2023


Janet Liang (Aug 19, 2023 18:54 PDT)

Janet Liang

Please Print Name of Authorized Signatory

THE PERMANENTE MEDICAL GROUP, INC.

Dated: _____

Please Print Name of Authorized Signatory

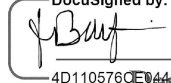
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**STIPULATION AND SETTLEMENT OF CLASS
AND PAGA REPRESENTATIVE ACTION**

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3 **APPROVED AS TO FORM**

4 **MOSS BOLLINGER LLP**

5 Dated: 6/11/2023
6 _____

DocuSigned by:

4D110576C7B4438

Dennis F. Moss
Jeremy F. Bollinger
Ari E. Moss
Attorneys for Plaintiff

9
10 **SEYFARTH SHAW LLP**

11 Dated: _____
12 _____

Christian J. Rowley
Kerry Friedrichs
Parnian Vafaenia
Attorneys for Defendants

1
2 **APPROVED AS TO FORM**

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4 **MOSS BOLLINGER LLP**

5 Dated: _____

6 _____
7 Dennis F. Moss
8 Jeremy F. Bollinger
9 Ari E. Moss
10 Attorneys for Plaintiff

11 **SEYFARTH SHAW LLP**

12 Dated: August 22, 2023

13 

14 _____
15 Christian J. Rowley
16 Kerry Friedrichs
17 Parnian Vafaeenia
18 Attorneys for Defendants
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EXHIBIT 1

to

**STIPULATION AND
SETTLEMENT OF CLASS AND
PAGA REPRESENTATIVE
ACTION**

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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

SANDY LIU, on behalf of herself and all others
similarly situated,

Plaintiff,

vs.

KAISER PERMANENTE INTERNATIONAL, a
California corporation; SOUTHERN CALIFORNIA
PERMANENTE MEDICAL GROUP, a California
partnership; THE PERMANENTE MEDICAL GROUP,
a California partnership; KAISER FOUNDATION
HOSPITALS, a California corporation; KAISER
FOUNDATION HEALTH PLAN, INC., a California
corporation; and DOES 1 through 30,

Defendants.

Case No.: RG21093802

**NOTICE OF PENDENCY OF CLASS
ACTION SETTLEMENT**

Hon. Evelio Grillo

Dept. 21

Date Action Filed: March 9, 2021

FINAL APPROVAL HEARING

DATE:

TIME:

A court approved this notice. This is not an advertisement.

NOTICE

IF YOU WORK OR WORKED AS A NON-EXEMPT, NON-UNION EMPLOYEE FOR KAISER FOUNDATION HOSPITALS, SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP, THE PERMANENTE MEDICAL GROUP, INC. OR KAISER FOUNDATION HEALTH PLAN, INC. IN CALIFORNIA FROM MARCH 9, 2017 THROUGH DECEMBER 31, 2022, AND YOU RECEIVED SHIFT DIFFERENTIALS IN WORKWEEKS WHEN YOU TOOK CERTAIN TYPES OF PAID TIME OFF (OR DURING THE PRIOR 90 DAYS BEFORE TAKING SUCH PAID TIME OFF), YOU MAY BE ELIGIBLE TO RECEIVE MONEY FROM A CLASS ACTION SETTLEMENT.

You are NOT being sued. However, your legal rights are affected whether you act or not.

Kaiser Foundation Hospitals, Kaiser Foundation Health Plan, Inc., Southern California Permanente Medical Group and The Permanente Medical Group, Inc. (collectively, "Defendants") **will not** fire, punish, retaliate, or otherwise discriminate against any employee because they choose to participate in this Settlement, choose not to participate, or object to the Settlement.

PLEASE READ THIS NOTICE

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1. Why It Is Important To Read This Notice:

The Superior Court of the State of California in and for the County of Alameda (the “Court”) has granted Preliminary Approval of a proposed settlement (the “Settlement”) of a class action lawsuit regarding wage and hour claims of persons who were employed by Defendants as non-exempt, non-union employees in California who took certain forms of paid time off in the same workweek as they received a shift differential (or if they received a shift differential in the 90 days prior to taking one of these forms of paid time off) (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

Defendants’ records show that you were employed by one of the Defendants in California as a non-exempt, non-union employee who met the criteria above sometime between March 9, 2017 and December 31, 2022. Therefore, you are a “Class Member” in this Lawsuit.

The Lawsuit also contains a sub-class composed of Class Members who were employed by Defendants in the State of California between August 10, 2020 through December 31, 2022 (“PAGA Group”). Defendants’ records show that you **[are part of the PAGA Group OR are not part of the PAGA Group]**.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, what investigation of the claims has taken place, and, finally, to inform you of the terms of the proposed Settlement and to discuss your rights and options in connection with the Lawsuit and the Settlement.

2. What The Case is About:

The plaintiff in *Sandy Liu v. Kaiser Permanente International, et al.* (Alameda County Superior Court Case No. RG21093802) (the “Lawsuit”) alleges that Defendants failed to properly pay for paid sick leave covered by the Healthy Workplaces, Healthy Families Act (“HWHFA”) at the correct rate of pay. She seeks back pay, penalties for failure to pay wages at termination under Labor Code section 203, and such related and derivative claims under California Business & Professions Code section 17200 *et seq.*, and Labor Code sections 2698 *et seq.* (“Private Attorneys General Act”).

Defendants deny each of the claims and contentions in the Lawsuit. However, they have concluded that any further defense of the Lawsuit would be protracted and expensive for all Parties. Defendants have already spent substantial amounts of time, energy and resources defending the Lawsuit. Defendants have, therefore, agreed to settle in the manner and upon the terms set forth in the Settlement Agreement to put to rest the claims as set forth in the Action.

3. What Is The Class Action Settlement?

The Court must approve the terms of the Settlement described below as fair and reasonable to the class. The Settlement will affect all members of the class. This Notice will explain the terms of the Settlement and the amount of money you may receive.

4. Who Is The Plaintiff in This Class Action?

Sandy Liu is the Plaintiff and Class Representative in the Settlement. She is acting on behalf of herself and on behalf of all other non-exempt hourly paid, non-union employees who worked for Defendants.

5. Who Are The Attorneys Representing The Parties?

Attorneys for Plaintiffs & the Class	Attorneys for Defendants
MOSS BOLLINGER LLP Dennis F. Moss dennis@mossbollinger.com Ari E. Moss ari@mossbollinger.com Jeremy F. Bollinger jeremy@mossbollinger.com 15300 Ventura Blvd., Ste. 207 Sherman Oaks, California 91403 Tel: (310) 982-2984; Fax: (818) 963-5954	SEYFARTH SHAW LLP Christian J. Rowley Kerry M. Friedrichs Parnian Vafaeenia 560 Mission Street, 31st Floor San Francisco, California 94105 Telephone: (415) 397-2823

6. What Do I Need To Do To Get Money From This Settlement?

For purposes of the Settlement, the Class Members are defined as all current and former non-union, non-exempt employees of Defendants in the State of California who took a form of paid time off that Defendants aggregated for settlement purposes as PSL, ESL or PTO in any workweek (or beginning in 2021, pay period) in which they received a work-related shift differential or received a work-related shift differential in the pay periods in the prior 90 days from March 9, 2017 through December 31, 2022.

Class Members do not need to take any action to receive their share of the Settlement fund. All Class Members who do not timely and effectively exclude themselves from the Settlement ("Settlement Class Members") will receive their share of the settlement fund.

Following final approval of the Settlement by the court, Defendants will fund the Settlement in a single installment. Distribution of the net settlement monies will be made to the Settlement Class Members within 14 calendar days after funding of the Settlement is complete. It is important to

1 update any changes to your mailing address between now and [INSERT FINAL APPROVAL
2 DATE], 2023, by contacting the Claims Administrator.

3 ***7. How Do I Remove Myself From This Settlement?***

4 **Excluding Yourself from the Settlement.**

5 If you do not wish to take part in the Settlement, you must submit a written request to the Claims
6 Administrator to be excluded from the Settlement. The written request must: (a) state your full
7 name, address, telephone number; (b) clearly state that you wish to be excluded from the
8 Settlement; (c) be signed by you; (d) be addressed to the Claims Administrator, Phoenix Class
9 Action Administration Solutions; and (e) be postmarked, emailed or faxed on or before
[REDACTED], 2023. However, a PAGA Group Member who submits a Request for
Exclusion will still remain a member of the PAGA Group, will receive a PAGA Settlement
Payment, and will release the PAGA claims in Section 9, below.

10 The Claims Administrator is:

11 Phoenix Class Action Administration Solutions
12 P.O. Box [INSERT]
[INSERT], CA 9[INSERT]
13 [email address]

14 The Judgment following approval of the Settlement by the Court will bind all Class Members who
15 do not request exclusion from the Settlement. Any Class Member who does not request exclusion
may, if they wish, enter an appearance through his or her own lawyer.

16 ***8. What If I Disagree With The Terms Of The Settlement?***

17 **Objecting to the Settlement**

18 If you wish to object to the Settlement, you shall file your objection with the Claims
19 Administrator. The objection should include your reasons why the Court should not approve the
20 Settlement, your name, address, and phone number, and/or the name, address and phone number
21 of the attorney representing you at your cost, if you have one. For an objection to be considered
timely, it must be postmarked, emailed or faxed on or before DATE. Counsel for the parties may
22 oppose your objection in writing or orally at the hearing on Final Approval. Whether or not you
appear at the hearing on Final Approval, the Court will consider all timely filed Objections. Please
23 note that Objections postmarked or faxed later than DATE shall be considered untimely and
waived.

24 **DO NOT TELEPHONE THE COURT.**

25 You may also, if you wish, appear at the Final Approval Hearing set for
[REDACTED] at [REDACTED] .m. in Dept. 21 of the Alameda County Superior Court
26 and discuss your objections with the Court and the Parties.

1 **9. How Does The Settlement Affect My Rights?**

2 Attorneys for the Class, also known as “Class Counsel,” appointed and approved by the Court for
3 settlement purposes only, will represent you.

4 If the proposed Settlement is approved by the Court, a Judgment will be entered by the Court. The
5 Judgment following approval of the Settlement by the Court will bind all Class Members who do
6 not request exclusion from the Settlement. Any Class Member who does not request exclusion
may, if they wish, enter an appearance, and may choose to be represented by the Class Member’s
own lawyer, at the Class Member’s expense.

7 If the Settlement is approved and you choose not to exclude yourself from the Settlement, you will
8 be forever barred from asserting any of the claims arising out of or relating to the Lawsuit against
9 Defendants (“Released Claims”) and each of their present and former affiliates and all of their
officers, directors, employees, agents, servants, registered representatives, attorneys, insurers,
successors, and assigns, and any other persons acting by, through, under or in concert with any of
them (“Released Parties”).

10 The Released Claims include any and all claims, debts, liabilities, demands, obligations, penalties,
11 waiting time penalties, premium pay, guarantees, costs, expenses, attorney’s fees, damages,
12 actions or causes of action of whatever kind or nature, whether known or unknown, contingent or
13 accrued, under any legal theory under federal and state law for the alleged non-payment or
14 underpayment for any time off taken for sick-related reasons, including all reasons covered by the
15 Healthy Workplaces, Healthy Families Act (Cal. Labor Code Section 245 *et seq.*) (“HWHFA”), up
to and including December 31, 2022. This Release shall include all claims and theories regarding
non-payment or underpayment of any time off taken for sick-related reasons (including all reasons
covered by the HWHFA) under the California Labor Code, California Business and Professions
Code, wage orders, and applicable regulations.

16 As to the Released Claims *only*, each Class Member waives all rights provided by California Civil
17 Code section 1542, which states:

18 A general release does not extend to claims that the creditor or releasing party does not
19 know or suspect to exist in his or her favor at the time of executing the release and that, if
known by him or her, would have materially affected his or her settlement with the debtor
or released party.

20 **10. How Much Can I Expect To Receive?**

21 Defendants will pay a Class Settlement Amount of \$1,715,000 (“Class Settlement Amount”)
22 to cover: (1) Settlement payments to Settlement Class Members and PAGA Group Members; (2)
23 the costs of administering the Settlement estimated to be \$42,000; (3) a Class
Representative Enhancement payment to Class Representative Sandy Liu, as set forth below
24 (4) payment of \$168,750 to the California Labor and Workforce Development Agency
25 (“LWDA”) for its portion of PAGA penalties; and (5) the Class Counsel Award and costs, as set
forth below.

26 After deducting the Class Representative Enhancements, Class Counsel’s awarded attorneys’ fees
27 and expenses, payment to the LWDA, and the Claims Administrator’s fees and expenses, the
balance of the Class Settlement Amount (the “Net Settlement Fund”) will be available for payment
28 to Settlement Class Members and PAGA Group Members.

1 \$56,250 of the Net Settlement Amount will be apportioned among the PAGA Group. PAGA
2 Group Members will receive a pro-rated share of the PAGA Settlement Payment, less applicable
3 withholdings, based on the number of each PAGA Group Member's Qualified Paid Leave Days as
a percentage of the total Qualified Paid Leave Days of all PAGA Group Members.

4 Individual Class Settlement Payments will be calculated and apportioned from the Net Settlement
5 Amount minus the PAGA Settlement Payment, based on each Settlement Class Member's
6 Qualified Paid Leave Days as a percentage of the total Qualified Paid Leave Days of all
7 Settlement Class Members.. All Individual Class Settlement Payments will be allocated as
8 follows: one-third (1/3) wages, one-third (1/3) interest and one-third (1/3) penalties. All wages
9 paid to Settlement Class Members shall be reflected on their individual W-2 forms. All remaining
10 portions of any Individual Settlement Payments made to Settlement Class Members shall, if
11 required by applicable state and/or federal law, be reported on a federal form 1099 that shall be
12 provided to the Individual Class Members.

13 **Defendants' records indicate that your Qualifying Paid Leave Days during the Class Period**
14 **were [REDACTED].**

15 **Defendants' records indicate that your Qualifying Paid Leave Days during the PAGA Period**
16 **were [REDACTED].**

17 **Based on the preceding information, your estimated settlement payment is [REDACTED].**

18 ***11. What if I Dispute my Number of Qualifying Paid Leave Days?***

19 If you dispute the number of Qualifying Paid Leave Days stated above, Defendants' records will
20 control unless you are able to provide documentation to the Claims Administrator that establishes
21 otherwise and that Defendants' records are mistaken. If you dispute the amount of your Qualifying
22 Paid Leave Days stated above, you must submit a written dispute to the Claims Administrator.
23 The written dispute must: (a) state your full name, address, telephone number; (b) include any
24 supporting documentation; (c) be signed by you; (d) be addressed to the Claims Administrator,
25 Phoenix Class Action Administration Solutions (at the address below); and (e) be postmarked or
26 faxed on or before _____, 2023.

27 For a dispute to be considered timely, it must be postmarked, faxed, or emailed on or before
28 **DATE**. If the dispute cannot be resolved informally, the dispute will be resolved by the Claims
Administrator.

29 ***12. How Will the Attorneys for the Class and Class Representatives Be Paid?***

30 The attorneys for the Class Representative and the Class will be paid from the Maximum
31 Settlement Amount. The actual amount of attorneys' fees awarded will be determined by the
32 Court, but will not exceed \$571,666, plus reasonable actual costs not to exceed \$10,000.
33 Additionally, Class Representative Sandy Liu will seek an enhancement award for services as
34 Class Representative in amount not to exceed \$10,000, subject to the Court's approval.

35 The Final Approval Hearing will be on **DATE**. You are welcome to attend and be heard by the
36 Court. Due to the COVID-19 pandemic, hearings are currently being conducted remotely with the
37 assistance of a third-party service provider, _____. Class members who wish

1 to appear at the final fairness hearing should arrange a telephonic appearance through
2 _____ at _____ at least three days before the
3 hearing if possible. The Court may change the date/time of the hearing, so you should consult the
4 Court's website ADDRESS as the date approaches, if you want to appear. It is unnecessary to file
an objection with the Court to be heard on matters unrelated to an objection. If you exclude
yourself from the Settlement, you may not be heard at the Final Approval Hearing.

5 IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may call Class
6 Counsel Moss Bollinger LLP (contact information in Section 5 above), or the Claims
Administrator at the telephone number listed below, toll free.

7 *Liu v Kaiser Permanente International, et al.*

8 Claims Administrator

9 c/o

10 Phoenix Class Action Administration Solutions

11 P.O. Box [INSERT]

[INSERT], CA 9[INSERT]

12 Phone: INSERT PHONE NUMBER

13 **PLEASE DO NOT TELEPHONE THE COURT OR COUNSEL FOR DEFENDANTS FOR**
14 **INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.**

15 **DATE:** _____