

# Exhibit 1

**QUINTILONE & ASSOCIATES**

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individually, and on behalf of a Class of all other  
persons similarly situated

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Attorneys for Plaintiff CHASMINE SHAW,  
individually, and on behalf of a Class of all other  
persons similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF RIVERSIDE, HISTORIC COURTHOUSE

CHASMINE SHAW, individually, and on behalf  
of a Class of all other persons similarly situated,

Plaintiff,

v.

KAISER FOUNDATION HEALTH PLAN, INC.  
a California corporation; and DOES 1 through  
100, inclusive ,

Defendant.

Case No. CVRI2102203

CLASS ACTION

Assigned For All Purposes To:  
Hon. Harold Hopp

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

Complaint Filed: May 12, 2021  
FAC Filed: Aug. 10, 2021  
SAC Filed: June 13, 2022

1 Subject to final approval by the Court, which counsel and the parties agree to diligently pursue and  
2 recommend in good faith, Plaintiff Chasmine Shaw (“Plaintiff”), individually and on behalf of all other  
3 similarly situated persons and aggrieved employees, on the one hand, and Defendant Kaiser Foundation  
4 Health Plan, Inc. (“Defendant” or “KFHP”), on the other hand (collectively, the “Parties” and individually,  
5 a “Party”), hereby agree to the following binding settlement of the class and representative action  
6 captioned above (the “Action”), pursuant to the terms and conditions set forth below (the “Settlement,”  
7 “Settlement Agreement” or “Agreement”).

8 **I. DEFINITIONS.**

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

11 **A. “Action.”**

12 The case entitled *Chasmine Shaw v. Kaiser Foundation Health Plan, Inc.*, Riverside County  
13 Superior Court Case Number CVRI2102203.

14 **B. “Attorneys’ Fees and Costs.”**

15 The attorneys’ fees agreed upon by the Parties and approved by the Court for Class Counsel’s  
16 litigation and resolution of the Action, and all costs incurred and to be incurred by Class Counsel in the  
17 Action, including, but not limited to, costs associated with documenting the Settlement, providing any  
18 notices required as part of the Settlement or Court’s Order, securing the Court’s approval of the  
19 Settlement, administering the Settlement, and any expert expenses.

20 Class Counsel will request attorneys’ fees not to exceed one-third (1/3) of the Class Settlement  
21 Amount, which is Three Hundred Twenty-Five Thousand Dollars (\$325,000), and actual documented  
22 costs not to exceed \$20,000. The Attorneys’ Fees and Costs awarded are subject to the Court’s approval.  
23 Such Attorneys’ Fees and Costs shall be paid from the Class Settlement Amount. Defendant shall have no  
24 liability for any other attorneys’ fees or costs. Any change in the requested Attorneys’ Fees and Costs  
25 amount is not a material term of this Agreement. To the extent that the Court approves less than the  
26 amount of Attorneys’ Fees and Costs requested by Class Counsel, the difference between the requested  
27 and awarded amounts will be distributed to Class Members on a proportional basis relative to the size of  
28 their claims as set forth in Section VI below. Class Counsel will be issued an IRS Form 1099 for the

Attorneys' Fees and Costs detailed in this Section and shall be solely and legally responsible for paying all applicable taxes on the payment made pursuant to this Section.

**C. "Class Counsel."**

Richard E. Quintilone of Quintilone & Associates, and David Markham, Maggie Realin, and Lisa Brevard of The Markham Law Firm shall be appointed Class Counsel upon approval by the Court.

**D. "Class List."**

A complete list of all Class Members that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator within twenty-one (21) calendar days after Preliminary Approval of this Settlement. The Class List will be formatted in a readable Microsoft Office Excel spreadsheet and will include each Class Member's full name, most recent mailing address, telephone number, Social Security number, dates of employment (*i.e.*, hire date and termination date, if applicable), PAGA Pay Periods and Workweeks (as defined below), and any other relevant information needed to calculate settlement payments.

**E. "Class Member(s)" or "Settlement Class."**

All non-exempt persons who were employed by Defendant in the State of California and who held the position of Customer Service Representative I, II, or III, Kaiser job code numbers 21121, 21122, 21123, or 24762 at any time during the Class Period. It shall be an opt-out class.

**F. "Class Period."**

The period from May 12, 2017 through the date of Preliminary Approval.

**G. "Class Representative Enhancement Payment."**

The amount to be paid to Plaintiff in recognition of her effort and work in prosecuting the Action on behalf of Class Members and for her general release of claims, as described in section Z, *infra*. Subject to the Court granting Final Approval of this Settlement Agreement, Plaintiff will request Court approval of a Class Representative Enhancement Payment in the amount of Ten Thousand Dollars (\$10,000). Plaintiff will be issued an IRS Form 1099 in connection with any Class Representative Enhancement Payment awarded by the Court. Plaintiff shall be solely and legally responsible for paying any and all applicable taxes on this payment and shall hold Defendant harmless from any claim or liability for taxes, penalties or interest arising as a result of the payment. The Class Representative Enhancement Payment will be paid

1 from the Class Settlement Amount and will be in addition to Plaintiff's individual settlement amount paid  
2 pursuant to the Settlement. Defendant makes no representations as to the tax treatment or legal effect of  
3 the payment called for herein, and Plaintiff is not relying on any statement or representation by Defendant  
4 or its counsel in this regard. Any change in the requested amount of the Class Representative  
5 Enhancement Payment is not a material term of this Agreement. To the extent that the Court approves less  
6 than the amount of Class Representative Enhancement Payment that Plaintiff requests, the difference  
7 between the requested and awarded amounts will be distributed to Class Members on a proportional basis  
8 relative to the size of their claims.

9 **H. "Class Settlement Amount."**

10 The sum of no more than a Gross Fund Value of Nine Hundred Seventy-Five Thousand Dollars  
11 (\$975,000) to be paid by Defendant in full satisfaction of all claims arising from the Action. The  
12 Settlement will be on a common fund basis, there will be no claim form or claims process and there will be  
13 no reversion to Defendant. The Class Settlement Amount includes all Individual Settlement Payments to  
14 Class Members and PAGA Group Members, the Class Representative Enhancement Payment to Plaintiff,  
15 Settlement Administration Costs to the Settlement Administrator, the Labor and Workforce Development  
16 Agency Payment, and the Attorneys' Fees and Costs. Defendant will be responsible for any employer  
17 payroll taxes required by law, separate and in addition to the Class Settlement Amount, including the  
18 employer FICA, FUTA, and SDI contributions on the wage portion of the Individual Settlement Payments.

19 **I. "Effective Date."**

20 The date on which the Final Award becomes final. For purposes of this Section, the Final Award  
21 "becomes final" only after both of the following have occurred: (i) Final Approval of the Settlement is  
22 granted by the Court and (ii) the Court's Judgment approving the settlement becomes Final. Final shall  
23 mean the latest of: (i) the date final approval is granted by the Court and there was no objection to the  
24 settlement, or the objection was filed and then withdrawn; (ii) if there is an appeal of the Court's  
25 Judgment, the date the Judgment is affirmed on appeal, the date of dismissal of such appeal, or the  
26 expiration of the time to file a petition for review with the California Supreme Court or other court in  
27 California assuming jurisdiction of this matter, or, (iii) if a petition for review is filed, the date of denial of  
28 the petition, or the date the Court's Judgment is pursuant to such petition; or (iv) if no appeal is filed, the

1 expiration date of the time for filing or noticing any appeal of the Court’s Judgment. If a timely objection  
2 to settlement is filed (including an objection from the LWDA), and not withdrawn, “Effective Date” shall  
3 be the later of: (a) the date on which the time for all appeals relating to objections to Settlement and the  
4 Final Approval Order has expired; or (b) if an appeal, review or writ is sought, the date on which the  
5 highest reviewing court renders its decision denying any petition (where the immediately lower court  
6 affirmed the judgment) or affirming the judgment. Provided, however, if the California Labor &  
7 Workforce Development Agency (“LWDA”) has commenced an investigation or issued a Citation prior to  
8 the Effective Date, as determined under the forgoing definition, the Effective Date will be extended to the  
9 date that the LWDA concludes its investigation or resolves the Citation (whichever is later), or if the  
10 LWDA objects to the Settlement, the date when the LWDA’s objection to the Settlement is resolved and  
11 no longer appealable.

12 **J. “Final Approval” or “Final Award.”**

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

14 **K. “Individual Class Settlement Payment.”**

15 Each Class Member’s share of the Net Settlement Amount minus the PAGA Settlement Payment  
16 (defined in Section O below), which shall be distributed to the Class Members, less employee portions of  
17 state and federal withholding taxes, including the employee FICA, FUTA and SDI contributions and any  
18 other applicable payroll deductions required by law as a result of the payment of the amount allocated to  
19 such Class Member as set forth herein. Employer-side payroll taxes shall be paid separately from the Class  
20 Settlement Amount, as defined in Section H, above.

21 **L. “Individual PAGA Settlement Payment.”**

22 Each PAGA Group Member’s share of the PAGA Settlement Payment (defined in Section O),  
23 below), which shall be distributed to the PAGA Group Members.

24 **M. “Individual Settlement Payment.”**

25 The payment to each Class Member that is the sum of the Class Member’s Individual Class and  
26 PAGA Settlement Payments.

**N. “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 concurrently with filing the Preliminary Approval Motion, and will thereafter submit a copy of any judgment or any other order (*e.g.*, the Final Award) providing for an award of civil penalties in conformity with Labor Code Section 2699(l).

**O. “LWDA Payment.”**

The amount that the Parties have agreed to pay to the LWDA in connection with settlement of Plaintiff’s PAGA claims. The Parties have agreed that Forty-Eight Thousand Seven Hundred Fifty Dollars (\$48,750) of the Class Settlement Amount will be allocated to the resolution of any Class Members’ claims arising under the PAGA (“PAGA Settlement Amount”). Pursuant to the PAGA, seventy-five percent of the PAGA Settlement Amount (Thirty-Six Thousand Five Hundred Sixty-Two Dollars and Fifty Cents (\$36,562.50)) will be paid to the LWDA (“LWDA Payment”) and twenty-five percent of the PAGA Settlement Amount (Twelve Thousand One Hundred Eighty-Seven Dollars and Fifty Cents (\$12,187.50)) will be included in the Net Settlement Amount. The \$12,187.50 included in the Net Settlement Amount will be referred to as the “PAGA Settlement Payment.” Any change in the requested PAGA Settlement Amount is not a material term of this Agreement. If the Court approves a lesser or greater amount than that requested, the other terms of this Agreement shall still remain in effect. However, some approval of a PAGA Settlement Amount is a material term of the Settlement and this Agreement. If the Court does not approve any PAGA Settlement Amount, without leave to amend, then the entire Agreement will be, at Defendant’s sole discretion, void and unenforceable. In such a case, the Parties shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Settlement Agreement, and the Parties shall proceed in all respects as if this Settlement Agreement had not been executed, except that the costs of administration shall be borne by Defendant.

**P. “Net Settlement Amount.”**

The portion of the Class Settlement Amount remaining after deduction of the approved Class Representative Enhancement Payment, Settlement Administration Costs, LWDA Payment, and the

Attorneys' Fees and Costs. Twelve Thousand One Hundred Eighty-Seven Dollars and Fifty Cents (\$12,187.50) of the Net Settlement Amount will be attributed to the PAGA Settlement Payment.

**Q. "Notice of Class Action Settlement."**

The document substantially in the form attached as **Exhibit 1** that will be mailed to Class Members' last known addresses and which will provide Class Members with information regarding the Action and information regarding the Settlement of the Action.

**R. "Notice of Objection."**

A Class Member's valid and timely written objection to the Settlement Agreement. For the Notice of Objection form to be valid, it must be completed in its entirety and signed by the Class Member. The Notice of Objection Form is attached hereto as Exhibit A to the Notice Packet. The Notice of Objection must be returned by mail or fax to the Settlement Administrator at the specified address or facsimile number and postmarked or faxed on or before the Response Deadline. The date of the postmark or fax receipt confirmation will be the exclusive means to determine whether a Notice of Objection has been timely submitted.

Class Members who fail to make objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement Agreement. However, anyone wishing to appear at the Final Approval hearing to discuss concerns or objections to the Settlement shall be permitted to do so, whether or not they submit a Notice of Objection. Neither the Parties nor their counsel will solicit or otherwise encourage Class Members to submit written objections to the Settlement Agreement or appeal from the Order and Judgment. Class Counsel will not represent any Class Members with respect to any such objections to this Settlement. The Settlement Administrator shall provide counsel for the Parties with complete copies of all objections received, including the date of postmark or fax receipt confirmation for each objection, within two (2) business days of receipt. The Administrator will provide copies of any objections and supporting documents to the Court in its declaration, at least sixteen (16) court days before the Final Approval Hearing. Plaintiffs and/or Defendant may file responses to any properly filed objections at least five (5) court days before the date of the Final Approval Hearing. In the event the Final Approval Hearing date is continued, Class Counsel will notify the Administrator so that the Administrator may notify any



1 objector(s) of the continued hearing date. Any objection will be considered by the Court at the Final  
2 Approval Hearing regardless of whether the objector chooses to appear at the Final Approval Hearing, or  
3 not. A Class Member who excludes himself or herself from the Settlement shall lose standing to object.

4 **S. “Notice Packet.”**

5 The Notice of Class Action Settlement and Individual Settlement Payment calculations. The  
6 packet, attached as Exhibit 1, will include information regarding each Class Member’s PAGA Pay Periods  
7 and/or Workweeks.

8 **T. “Operative Complaint.”**

9 The Second Amended Complaint filed in the Action on June 13, 2022.

10 **U. “PAGA Group.”**

11 The Parties agree that the PAGA Settlement Payment will be allocated to the PAGA Group, which  
12 will be composed of all Settlement Class Members who were employed by Defendant in the State of  
13 California between May 11, 2020 through the date of Preliminary Approval (“PAGA Period”).

14 **V. “PAGA Pay Period.”**

15 Any pay period during the PAGA Period in which a member of the PAGA Group has performed  
16 work for Defendant. PAGA Pay Periods do not include full pay periods when a member of the PAGA  
17 Group was on a leave of absence, vacation, or otherwise performed no work for Defendant.

18 **W. “Plaintiff.”**

19 Plaintiff Chasmine Shaw on behalf of herself and all others similarly situated and the general  
20 public.

21 **X. “Preliminary Approval.”**

22 The Court’s order granting preliminary approval of the Settlement Agreement.

23 **Y. “Qualified Settlement Account.”**

24 The fund established by the Settlement Administrator pursuant to Internal Revenue Code Section  
25 1.468B-1.

26 **Z. “Released Claims.”**

27 As of the date of the Order Granting Final Approval, Class Members who do not opt out shall  
28 release Defendant and all of its past, present and future officers, directors, employees, agents, affiliates,

1 and subsidiaries (“Releasees”), from any and all claims, debts, liabilities, demands, obligations, penalties,  
2 premium pay, guarantees, costs, expenses, attorney’s fees, damages, actions or causes of action of  
3 whatever kind or nature, whether known or unknown, contingent or accrued, under any legal theory under  
4 federal and state law for all claims alleged based on the facts asserted in the Operative Complaint,  
5 including for any alleged failure to pay all wages due (including minimum wage and overtime wages),  
6 claims regarding rounding, grace periods, shift tolerance, failure to pay for all hours worked (including  
7 off-the-clock work), that the Labor Code Section 514 exemption does not apply to Defendant’s employees,  
8 failure to properly calculate the regular rate of pay, failure to provide meal and/or rest periods, short meal  
9 and/or rest periods, failure to relieve employees of all duties during meal and/or rest periods, failure to  
10 provide compliant meal and/or rest periods as required by law pursuant to the Labor Code, applicable  
11 Wage Order, and applicable legal precedent, failure to pay or properly calculate meal period premiums  
12 and/or rest period premiums, failure to timely pay wages and final wages, failure to furnish accurate wage  
13 statements, failure to reimburse business expenses, unfair competition and/or business practices and  
14 unlawful competition and/or business practices, liquidated damages, conversion of wages, and  
15 recordkeeping violations (the “Class Release”). This Release shall include all claims and theories arising  
16 under the California Labor Code, wage orders, and applicable regulations, including Labor Code sections  
17 201, 202, 203, 204, 206, 210, 218, 218.5, 218.6, 226, 226.3, 226.7, 510, 511, 512, 551, 552, 558, 1174,  
18 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, all claims and theories arising under  
19 Labor Code section 2802 as well as claims under Business & Professions Code section 17200 et seq.,  
20 California Code of Regulations, title 8, section 11000 set seq., and/or Labor Code section 2698 et seq.  
21 based on alleged violations of the above Labor Code provisions. Class Members who do not opt out shall  
22 further waive their right to pursue individual lawsuits as to any of the released claims against the Releasees  
23 to the extent such claims accrued during the Settlement Period.

24         Additionally, Plaintiff, on behalf of the State of California, will release Defendant and Releasees  
25 from any and all PAGA claims or causes of action of whatever kind or nature which occurred during the  
26 PAGA Period that were or reasonably could have been brought based on the facts alleged in the Operative  
27 Complaint and in the LWDA Letter submitted by Plaintiff, regardless of theory of recovery, including but  
28

not limited to, any alleged violations of or relief under California Labor Code as outlined above (the “PAGA Release”). The release shall run through the date of Preliminary Approval.

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 Defendant and her compensation while an employee of Defendant which occurred at any time including before or during the Class Period. Excepted from Plaintiff’s general release are any claims by Plaintiff for workers’ compensation benefits, and the claims currently asserted in Plaintiff’s lawsuit entitled, *Chasmine Shaw v. Kaiser Foundation Health Plan et al.*, Riverside County Case Number CV-RI-2301904. As to the released claims, Plaintiff waives all rights provided by California Civil Code section 1542, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

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

**AA. “Request for Exclusion.”**

A notice submitted by a Class Member requesting to be excluded from the Settlement. For the Request for Exclusion form to be valid, it must be completed in entirety and signed by the Class Member. The Request for Exclusion Form is attached hereto as Exhibit B to the Notice Packet. The Request for Exclusion must be returned by mail or fax to the Settlement Administrator at the specified address or facsimile number and postmarked or faxed on or before the Response Deadline. The Settlement

1 Administrator will submit a declaration at least sixteen (16) days prior to Final Approval documenting any  
2 exclusion forms received. The date of the postmark or fax receipt confirmation will be the exclusive means  
3 to determine whether a Request for Exclusion has been timely submitted. A Class Member who does not  
4 submit a timely and valid Request for Exclusion from the Settlement will be deemed a Class Member and  
5 will be bound by all terms of the Settlement Agreement if the Settlement is granted Final Approval by the  
6 Court.

7 Any Class Member who opts out of this Agreement may not submit an Objection, shall not receive  
8 any Class Settlement Payment, and shall not be bound by the Class Release set forth in this Agreement.  
9 However, a PAGA Group Member who submits a Request for Exclusion will still remain a member of the  
10 PAGA Group, will receive a PAGA Settlement Payment, and will be bound by the PAGA Release. If a  
11 Class Member submits both a Request for Exclusion and an Objection, then the Request for Exclusion will  
12 be valid and will invalidate the Objection. Plaintiff, as class representative, is not permitted to, and agrees  
13 that she will not object to or opt out of this Agreement.

14 **BB. “Response Deadline.”**

15 The deadline by which Class Members must mail or fax to the Settlement Administrator valid  
16 Requests for Exclusion, Notices of Objection to the Settlement, or PAGA Pay Period or Workweek  
17 disputes (“Pay Period / Workweek Disputes”). The Response Deadline will be forty-five (45) calendar  
18 days from the initial mailing of the Notice Packet by the Settlement Administrator, unless the 45th day  
19 falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next day  
20 on which the U.S. Postal Service is open. The Response Deadline for Requests for Exclusion, Notices of  
21 Objection, or Pay Period / Workweek Disputes will be extended fifteen (15) calendar days for any Class  
22 Member who is re-mailed a Notice Packet by the Settlement Administrator, unless the 15th day falls on a  
23 Sunday or Federal holiday, in which case the Response Deadline will be extended to the next day on  
24 which the U.S. Postal Service is open. The Response Deadline may also be extended by express  
25 agreement between Class Counsel and Defendant. Under no circumstances, however, will the Settlement  
26 Administrator have the authority to unilaterally extend the deadline for Class Members to submit a  
27 Request for Exclusion, Notice of Objection to the Settlement, or Pay Period / Workweek Disputes.  
28

1           **CC. “Settlement Administrator.”**

2           ILYM Group, Inc. shall be the third-party class action settlement administrator as agreed to by the  
3 Parties and approved by the Court for the purposes of administering this Settlement and will issue to class  
4 members a form W-2 and 1099 for all amounts paid under this Settlement, making all deductions and  
5 withholdings required under law. The Parties mutually selected the Settlement Administrator after  
6 soliciting bids from four class action settlement administrators. The Parties each represent that they do not  
7 have any financial interest in the Settlement Administrator or otherwise have a relationship with the  
8 Settlement Administrator that could create a conflict of interest.

9           **DD. “Settlement Administration Costs.”**

10          The costs payable from the Class Settlement Amount to the Settlement Administrator for  
11 administering this Settlement, including, but not limited to, printing, distributing, and tracking  
12 documents for this Settlement, calculating estimated amounts per Class Member, tax reporting,  
13 distributing the Class Settlement Amount, and providing necessary reports and declarations, and other  
14 duties and responsibilities set forth herein to process this Settlement Agreement, and as requested by the  
15 Parties. The Settlement Administration Costs will be paid from the Class Settlement Amount, including,  
16 if necessary, any such costs in excess of the amount represented by the Settlement Administrator as  
17 being the maximum costs necessary to administer the Settlement. The Settlement Administration Costs  
18 are currently estimated to be approximately \$11,475. To the extent actual Settlement Administration  
19 Costs are greater than \$11,475 such excess amount will be deducted from the Class Settlement Amount,  
20 subject to the Court’s approval. The Settlement Administration Costs will be paid no sooner than fifteen  
21 (15) calendar days following the Effective Date.

22          **EE. “Settlement Payment Check.”**

23          The payment to Class Members.

24          **FF. “Workweek.”**

25          Any workweek during the Class Period in which a Class Member has performed work for  
26 Defendant. Workweeks do not include full workweeks when a Class Member was on a leave of absence,  
27 vacation, or otherwise performed no work for Defendant.  
28

1 **II. FUNDING OF THE CLASS SETTLEMENT AMOUNT.**

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

10 **III. ATTORNEYS' FEES AND COSTS.**

11 Class Counsel will apply for attorneys' fees of not more than Three Hundred Twenty-Five  
12 Thousand Dollars (\$325,000), plus actual documented costs. Class Counsel shall not be entitled to  
13 attorneys' fees or costs for work performed in the Action other than as provided in this Settlement  
14 Agreement. The instant Settlement Agreement is the exclusive means for recovery of attorneys' fees and  
15 costs incurred in the Action by any attorney, law firm and/or other legal services provider.

16 **IV. LABOR AND WORKFORCE DEVELOPMENT AGENCY PAYMENT.**

17 Subject to Court approval, the Parties agree that Forty-Eight Thousand Seven Hundred Fifty  
18 Dollars (\$48,750) of the Class Settlement Amount will be designated for satisfaction of Plaintiff's and  
19 Class Members' PAGA claims (the "PAGA Settlement Amount"). Pursuant to the PAGA, Thirty-Six  
20 Thousand Five Hundred Sixty-Two Dollars and Fifty Cents (\$36,562.50) (75%) of the PAGA Settlement  
21 Amount will be paid to the LWDA and Twelve Thousand One Hundred Eighty-Seven Dollars and Fifty  
22 Cents (\$12,187.50) (25%) of the PAGA Settlement Amount will be included in the Net Settlement  
23 Amount.

24 **V. NET SETTLEMENT AMOUNT.**

25 The Net Settlement Amount will be used to satisfy Individual Settlement Payments to Class  
26 Members from the Settlement Class in accordance with the terms of this Settlement.  
27  
28

**VI. INDIVIDUAL SETTLEMENT PAYMENT CALCULATIONS.**

**A. Individual PAGA Settlement Payment**

Twelve Thousand One Hundred Eighty-Seven Dollars and Fifty Cents (\$12,187.50) of the Net Settlement Amount will be apportioned among the PAGA Group Members. Specific calculations of Individual PAGA Settlement Payments will be made as follows: Defendant will calculate the PAGA Pay Periods of each PAGA Group Member during the PAGA Period and provide those calculations to the Settlement Administrator. PAGA Group Members will receive a pro-rated share of the PAGA Settlement Payment based on their PAGA Pay Periods worked for Defendant during the PAGA Period. Each PAGA Group Member will be entitled to receive an amount that is determined by multiplying the PAGA Settlement Payment by a ratio that is determined by dividing the PAGA Group Member's PAGA Pay Periods by the PAGA Pay Periods worked by all PAGA Group Members, as expressed by the following formula: PAGA Group Member Payment = (PAGA Group Member's PAGA Pay Periods divided by Total PAGA Pay Periods) x PAGA Settlement Payment.

**B. Individual Class Settlement Payment**

Separate and apart from PAGA Settlement Payment, Individual Class Settlement Payments will be calculated and apportioned from the Net Settlement Amount minus the PAGA Settlement Payment based on the Workweeks of each Class Member during the Class Period. Specific calculations of Individual Class Settlement Payments will be made as follows: Defendant will calculate the Workweeks of each Class Member during the Class Period and provide those calculations to the Settlement Administrator. Class Members will receive a pro-rated share of the Net Settlement Amount ("NSA") less the PAGA Settlement Payment (the "Remaining NSA"), less applicable withholdings, based on their Workweeks worked for Defendant during the Class Period. Each Class Member will be entitled to receive an amount that is determined by multiplying the Remaining NSA by a ratio that is determined by dividing the Class Member's Workweeks by the Workweeks worked by all Class Members, as expressed by the following formula: Class Member Payment = (Class Member's Workweeks divided by Total Workweeks) x Remaining NSA.

1           **C.      Individual Settlement Payment Calculation**

2           Each Class Member's Individual Settlement Payment will be the sum of the Class Member's  
3 Individual PAGA Settlement Payment and Individual Class Settlement Payment. Each Class Member's  
4 Individual Settlement Payment will be reduced by any required deductions for the Class Member as set  
5 forth herein, including employee-side tax withholdings or deductions.

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

12       **VII.   SETTLEMENT ADMINISTRATION PROCESS.**

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

- 16           a.       Establish and maintain a Qualified Settlement Account.
- 17           b.       Calculate the Individual Class and PAGA Settlement Payment each Class Member  
18 is eligible to receive, and the sum of such payments.
- 19           c.       Print and mail the Notice Packet.
- 20           d.       Establish and maintain a toll-free information telephone support line and case-  
21 dedicated static webpage to assist Class Members who have questions regarding the  
22 Notice Packet.
- 23           e.       Conduct additional address searches for mailed Notice Packets that are returned as  
24 undeliverable.
- 25           f.       Process Requests for Exclusion, calculate Class Members' Individual Class and  
26 PAGA Settlement Payment and the sum of such payments, field inquiries from  
27 Class Members, and administer any Requests for Exclusion. This service will  
28 include settlement proceeds calculation, printing and issuance of Settlement



1 Payment Checks, and preparation of IRS W-2 and 1099 Tax Forms. Basic  
2 accounting for and payment of employee tax withholdings and forwarding all  
3 payroll taxes and penalties to the appropriate government authorities will also be  
4 included as part of this service.

5 g. Settling disputes from Class Members regarding number of PAGA Pay Periods and  
6 Workweeks, with the involvement and assistance of Defendant's Counsel and Class  
7 Counsel.

8 h. Issuing to Plaintiff, Class Members, and Class Counsel any W-2, 1099, or other tax  
9 forms as may be required by law for all amounts paid pursuant to this Settlement.

10 i. Provide declarations and/or other information to the Court as requested by the  
11 Parties and/or the Court.

12 j. Provide weekly status reports to counsel for the Parties.

13 2. Within twenty-one (21) calendar days of Preliminary Approval, Defendant will provide the  
14 Class List to the Settlement Administrator.

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

18 4. Prior to mailing, the Settlement Administrator will perform a search based on the National  
19 Change of Address Database for information to update and correct any known or identifiable address  
20 changes. Any Notice Packets returned to the Settlement Administrator as non-deliverable on or before the  
21 Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address  
22 affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Notice  
23 Packet. If no forwarding address is provided, the Settlement Administrator will promptly attempt to  
24 determine the correct address using a skip-trace, or other search using the name, address and/or Social  
25 Security number of the Class Member involved and will then perform a single re-mailing. Those Class  
26 Members who receive a re-mailed Notice Packet, whether by skip-trace or by request, will have between  
27 the later of (a) an additional fifteen (15) calendar days or (b) the Response Deadline to postmark or fax a  
28 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 PAGA Pay Periods or Workweeks (“Pay Period / Workweek Dispute”) 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 Defendant’s records, Defendant’s 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 PAGA Pay Periods and/or Workweeks that should be applied and/or the Individual Settlement Payment to which the Class Member may be entitled. The Pay Period / Workweek Dispute must be returned by mail or fax to the Settlement Administrator at the specified address or facsimile number and postmarked or faxed on or before the Response Deadline. The date of the postmark or fax receipt confirmation will be the exclusive means to determine whether a Pay Period / Workweek Dispute has been timely submitted. All such disputes are to be resolved not later than fourteen (14) calendar days after the Response Deadline.

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

8. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the Settlement Agreement must sign and postmark or fax the written Request for Exclusion attached to this Agreement as Exhibit B to the Settlement Administrator within the Response Deadline. The date of the postmark on the return mailing envelope or the fax receipt confirmation will be the exclusive means to determine whether a Request for Exclusion has been timely submitted. All Requests for Exclusion will be

submitted to the Settlement Administrator, who will certify jointly to Class Counsel and Defendant's Counsel the Requests for Exclusion that were timely submitted. Any Class Member who does not timely seek exclusion will be bound by the terms of this Settlement Agreement.

#### **VIII. NULLIFICATION OF THE SETTLEMENT AGREEMENT.**

1. Defendant's Option to Nullify the Settlement Agreement. If five percent (5%) or more of the Class Members opt out of the Settlement (or are otherwise excluded), Defendant, in its sole discretion, shall have the option of nullifying the Settlement Agreement. Defendant shall give written notice to Class Counsel within five (5) calendar days after the Settlement Administrator informs the Parties that the opt out rate exceeds five percent (5%). 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 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 Defendant.

2. Nullification of the Settlement Agreement. In the event: (i) the Court does not enter the Preliminary Approval Order and approve the Released Settlement specified herein; (ii) the Court does not finally approve the Settlement as provided herein; (iii) Defendant exercises its option to nullify the Settlement Agreement based on an excessive number of opt-outs, as described in the above Section; or (iv) the Settlement does not become final for any other reason (*e.g.*, an objection by the LWDA), this Settlement Agreement shall be null and void. 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, in the event of (i), (ii) or (iv) as set forth in this paragraph, any fees already incurred by the Settlement Administrator shall be shared equally.

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

**IX. CERTIFICATION REPORTS REGARDING INDIVIDUAL SETTLEMENT PAYMENT CALCULATIONS.**

1. The Settlement Administrator will provide Defendant's 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 his/her 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 which are attributed to the Individual Class Settlement Payments shall be distributed to the *cy pres* recipient selected by the parties, California Rural Legal Assistance, consistent with California Code of Civil Procedure § 384, subject to Court approval and the Class Member remains bound by the Settlement. Pursuant to California Code of Civil Procedure § 384.4, the Parties and the attorneys signing this Agreement hereby notify the Court that they and their respective firms have no relationship with or connection to the *cy pres* recipient, California Rural Legal Assistance, that could create an appearance of impropriety. Any portion of the Settlement Check attributed to the PAGA Settlement Payment which remains uncashed, will be distributed to the LWDA.

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.

1 **X. TAX TREATMENT OF INDIVIDUAL SETTLEMENT PAYMENTS.**

2 The Individual Class Settlement Payments will be allocated as follows: one-third (1/3) wages, one-  
3 third (1/3) interest and one-third (1/3) penalties. The Individual PAGA Settlement Payments will be  
4 allocated 100% to penalties and interest.

5 The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to  
6 non-wages will be reported on an IRS Form-1099 by the Settlement Administrator. The gross Individual  
7 Settlement Payments will be reduced by any required legal deductions for each Class Member. All  
8 standard employee payroll deductions will be made for state and federal withholding taxes, including any  
9 other applicable payroll deductions owed by the Class Members as a result of the Wage Component,  
10 resulting in a net wage component. The Settlement Administrator will issue a check and W-2 Form to  
11 each Class Member for the wage component. No withholding shall be made on the penalty portions of the  
12 gross Individual Settlement Payment. The Settlement Administrator will issue a second check and IRS  
13 Form-1099 for the remaining penalty component. The Settlement Administrator shall be responsible for  
14 issuing the payments and calculating and withholding all required state and federal taxes. The Settlement  
15 Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payments  
16 under the terms of this Settlement Agreement. Any disputes not resolved by the Settlement Administrator  
17 concerning the administration of the Settlement will be resolved by the Court, under the laws of the State  
18 of California. Prior to any such involvement of the Court, counsel for the Parties will confer in good faith  
19 to resolve the dispute without the necessity of involving the Court.

20 **XI. ADMINISTRATION OF TAXES BY THE SETTLEMENT ADMINISTRATOR.**

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

26 2. Circular 230 Disclaimer. EACH PARTY TO THIS SETTLEMENT AGREEMENT (FOR  
27 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS  
28 SETTLEMENT AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER

PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS SETTLEMENT AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS SETTLEMENT AGREEMENT, (B) HAS NOT ENTERED INTO THIS SETTLEMENT AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS SETTLEMENT AGREEMENT.

## **XII. RELEASE BY CLASS MEMBERS.**

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

2. Class Release. It is the desire of Plaintiff, Class Members (except those who exclude themselves from the Settlement), and Defendant to fully, finally, and forever settle, compromise, and discharge the claims set forth in the Class Release in Section I(Z) above. Upon the Final Approval by the Court of this Settlement Agreement, and except as to such rights or claims as may be created by this

Settlement Agreement, the Class Release shall become fully effective as to Plaintiff and all Class Members. This release shall be binding on all Class Members who have not timely submitted a valid and complete Request for Exclusion, including each of their respective attorneys, agents, spouses, executors, representatives, guardians ad litem, heirs, successors, and assigns, and shall inure to the benefit of the Released Parties, who shall have no further or other liability or obligation to any Class Member with respect to the Released Claims, except as expressly provided herein.

### **XIII. RELEASE BY PAGA GROUP MEMBERS**

1. PAGA Release. It is the desire of Plaintiff, PAGA Group Members, and Defendant to fully, finally, and forever settle, compromise, and discharge the claims set forth in the PAGA Release in Section I(Z) above. Upon the Final Approval by the Court of this Settlement Agreement, Plaintiff on behalf of the State of California will release Defendant and Released Parties from all claims described in the PAGA Release in Section I(Z) above. This release shall be binding on all PAGA Group Members, who have no opportunity to exclude themselves from this release.

### **XIV. MATERIALITY OF TERMS.**

1. The Court's approval of Class Representative Enhancement Payment, 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, without leave to amend, 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 VIII 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.

**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 LWDA Payment; (c) the Attorneys' Fees and Costs; (d) the Class Representative Enhancement Payment; and (e) all Settlement Administration Costs.

2. The Parties will request that 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. 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. ESCALATOR CLAUSE**

1. Based on its records, Kaiser estimates that, as of the date of the Parties' mediation, there were (1) 1,050 Class Members and 140,248 total Workweeks during the Class Period; and (2) 830 PAGA Group Members and 31,931 total PAGA Pay Periods during the PAGA Period. If the actual number of Workweeks during the Class Period exceeds this estimate by more than Ten Percent (10%)



(i.e., at least 154,273 Total Workweeks worked by Participating Class Members during the Class Period), Defendant shall have the option in its sole and absolute discretion to either: a) increase the Gross Fund Value proportionately for each additional Workweek worked by Participating Class Members over 154,273 Total Workweeks; or b) agree that the Class Period and the PAGA Period shall cut off as of the date the number of Workweeks worked by Participating Class Members is at least 154,273.

#### **XVIII. 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.

#### **XIX. 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.

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

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

4. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to

1 reach agreement on the form or content of any document needed to implement the Settlement, or on any  
2 supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties  
3 may seek the assistance of David Rotman to resolve such disagreement.

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

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

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

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

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

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

25 11. Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate to  
26 class certification only for purposes of the Settlement. If, for any reason, the Settlement is not approved,  
27 the stipulation to certification will be void. The Parties further agree that certification for purposes of the  
28 Settlement is not an admission that class action certification is proper under the standards applied to

1 contested certification motions and that this Settlement Agreement will not be admissible in this or any  
2 other proceeding as evidence that either: (a) a class action should be certified or (b) Defendant is liable to  
3 Plaintiff or any Class Member, other than according to the Settlement's terms.

4 12. Non-Admission of Liability. The Parties enter into this Settlement Agreement to resolve  
5 the dispute that has arisen between them and to avoid the burden, expense, and risk of continued litigation.  
6 In entering into this Settlement Agreement, Defendant does not admit, and specifically denies, that it has  
7 violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any  
8 statute or any other applicable laws, regulations or legal requirements; breached any contract; violated or  
9 breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful  
10 conduct with respect to its employees. Neither this Settlement Agreement, nor any of its terms or  
11 provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession  
12 by Defendant of any such violations or failures to comply with any applicable law. Except as necessary in  
13 a proceeding to enforce the terms of this Settlement Agreement, this Settlement Agreement and its terms  
14 and provisions shall not be offered or received as evidence in any action or proceeding to establish any  
15 liability or admission on the part of Defendant or to establish the existence of any condition constituting a  
16 violation of, or a non-compliance with, federal, state, local or other applicable law.

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

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

23 15. Enforcement Action. If one or more of the Parties institutes any legal action or other  
24 proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare  
25 rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover  
26 from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees  
27 incurred in connection with any enforcement actions.  
28

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

6           17.   Representation by Counsel. The Parties acknowledge that they have been represented by  
7 counsel throughout all negotiations that preceded the execution of this Settlement Agreement and that this  
8 Settlement Agreement has been executed with the consent and advice of counsel and reviewed in full.  
9 Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the Settlement  
10 Agreement.

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

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

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

21           21.   No Prior Assignments or Undisclosed Liens. Plaintiff and Class Counsel represent that  
22 they have not assigned, transferred, conveyed, or otherwise disposed of any Released Claim or claim to  
23 attorneys' fees and costs award to be paid under this Agreement. Plaintiff and Class Counsel further  
24 represent and warrant that there are not any liens or claims against any amount that Defendant is to pay  
25 under this Agreement. Plaintiff and Class Counsel agree to defend, to indemnify, and to hold Defendant  
26 harmless from any liability, losses, claims, damages, costs, or expenses, including reasonable attorneys'  
27 fees, resulting from a breach of these representations or from any lien or assignment.  
28

22. Confidential Information. Class Counsel will destroy all confidential documents and information provided by Defendant within 60 calendar days after the completion of the administration of this Agreement. Notwithstanding this provision, Class Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits and attorney work product. Class Counsel further agree that none of the information provided by Defendant shall be used for any purpose other than prosecution of this Action.

23. Publicity. Plaintiff and Class Counsel shall not publicize the settlement on their websites, in advertising/marketing materials or on social media, other than filing documents with the Court. The Parties and their counsel agree that they will not issue any press releases or initiate any contact with the media about the fact, amount, or terms of the settlement. If counsel for any party receives an inquiry about the settlement from the media, counsel may respond only after the motion for approval of the settlement has been filed and only by confirming the accurate terms of the settlement. However, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the name of the Parties in this action and the venue/case number of this action, and the Gross Settlement Amount, for such purposes. Nothing in this provision shall prevent the parties from making any required disclosure.

SIGNATURES ON NEXT PAGE

1 Dated: \_\_\_\_\_

2 Plaintiff Chasmine Shaw

3  
4 **KAISER FOUNDATION HEALTH PLAN,**  
5 **INC.**

6  
7 Dated: \_\_\_\_\_

8  
9 Please Print Name of Authorized Signatory

10 **APPROVED AS TO FORM**

11 **THE MARKHAM LAW FIRM**

12  
13 Dated: \_\_\_\_\_

14 David Markham  
15 Maggie Realin  
16 Lisa Brevard  
Attorneys for Plaintiff Chasmine Shaw

17 **QUINTILONE & ASSOCIATES**

18  
19 Dated: \_\_\_\_\_

20 Richard E. Quintilone  
Attorney for Plaintiff Chasmine Shaw

21  
22 **SEYFARTH SHAW LLP**

23  
24 Dated: \_\_\_\_\_

25 Christian J. Rowley  
26 Andrew M. McNaught  
27 Bailey K. Bifoss  
Attorneys for Defendant KAISER  
28 FOUNDATION HEALTH PLAN, INC.