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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

JOHN DOE, JOHN DOE II, JOHN DOE III,
JANE DOE, JANE DOE II, JANE DOE III,
JANE DOE IV, JANE DOE V, and ALEXIS
SUTTER, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

KAISER FOUNDATION HEALTH PLAN,
INC., KAISER FOUNDATION HOSPITALS,
and KAISER FOUNDATION HEALTH PLAN
OF WASHINGTON,

Defendants.

Case No. 3:23-cv-02865-EMC

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
PROPOSED CLASS ACTION
SETTLEMENT AND PLAN OF
ALLOCATION, AND MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Judge: Hon. Edward M. Chen
Date: May 7, 2026
Time: 1:30 p.m.
Court: 5

CMC Filed: December 6, 2024

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on May 7, 2026 at 1:30 p.m., the Honorable Edward M. Chen presiding, Plaintiffs John Doe, John Doe II, Jane Doe, Jane Doe II, Jane Doe III, Jane Doe IV, Jane Doe V, and Alexis Sutter (collectively, the “Plaintiffs” or “Settlement Class Representatives”), will and hereby do move pursuant to Federal Rule of Civil Procedure (“Rule”) 23 for orders: (i) granting final approval of the proposed settlement of the above-captioned class action (“Action”) as set forth in the Amended Stipulation of Settlement dated December 1, 2025 (ECF Nos. 390-1; 392-1) (“Stipulation” or “Stip.”) between Plaintiffs and Defendant Kaiser Foundation Health Plan, Inc. (“Kaiser” or “Defendant” and, together with Plaintiffs, the “Parties”), and (ii) approving the proposed method for allocating the net Settlement proceeds to eligible Settlement Class Members (“Plan of Allocation”).

Plaintiffs’ Motion is based on this Notice of Motion and Motion, the supporting Memorandum of Points and Authorities that follows, the accompanying Declaration of Tyler S. Graden in Support of (i) Plaintiffs’ Motion for Final Approval of Proposed Class Action Settlement and Plan of Allocation; and (ii) Class Counsel’s Motion for Attorneys’ Fees, Litigation Expenses and Service Awards (“Graden Declaration” or “Graden Decl.”), the supporting declarations of the eight Plaintiffs (collectively, “Plaintiffs’ Declarations”), the Stipulation and exhibits attached thereto, the papers and pleadings filed in this Action, the arguments of counsel, and any other matters properly before the Court. The Graden Declaration is an integral part of this submission and, for the sake of brevity in the Memorandum of Points and Authorities, Plaintiffs refer the Court to the Graden Declaration for a detailed description of, *inter alia*: the procedural history of the Action, the Settlement negotiations, the risks of continued litigation, the Court-approved notice plan, and the proposed Plan of Allocation.¹

Pursuant to the Court’s Order as Modified Preliminarily Approving Settlement and Approving Notice of Proposed Settlement of Class Action and Fairness Hearing dated December 5, 2025 (ECF No. 393) (“Preliminary Approval Order”), any objections to the Settlement and/or Plan of Allocation

¹ All capitalized terms not otherwise defined herein have the meanings ascribed to them in the Stipulation or in the Graden Declaration. Citations to “¶ _” and “Ex. _” refer respectively to paragraphs in and exhibits to the Graden Declaration. Unless otherwise noted, all internal quotation marks, citations, or other punctuation are omitted, and all emphasis is added.

1 must be filed by March 12, 2026 and will be addressed in Plaintiffs' reply papers to be filed on April
2 2, 2026. A proposed judgment and order granting the relief requested herein will be submitted with
3 Plaintiffs' reply papers, after the objection deadline has passed.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiffs, on behalf of the Settlement Class, respectfully submit this Memorandum of Points
3 and Authorities in support of their Motion for Final Approval of the Proposed Class Action Settlement
4 and Plan of Allocation.

5 **STATEMENT OF THE ISSUES TO BE DECIDED**

- 6 1. Whether the Court should approve the proposed Settlement of the Action as fair,
7 reasonable, and adequate under Rule 23(e)(2).
- 8 2. Whether the Court should approve the Plan of Allocation as fair and reasonable.
- 9 3. Whether the Court should finally certify the Settlement Class pursuant to Rules 23(a)
10 and (b)(3) for purposes of effectuating the Settlement only.

11 **I. PRELIMINARY STATEMENT**

12 After extensive litigation and motion practice—including a motion for preliminary injunction,
13 three rounds of motion to dismiss briefing, three rounds of briefing on Defendant’s motions to compel
14 arbitration, extensive discovery, and protracted settlement negotiations—Plaintiffs and their counsel
15 Kessler Topaz Meltzer & Check, LLP (“KTMC”) and Carella, Byrne, Cecchi, Brody & Agnello, P.C.
16 (“Carella Byrne” and together with KTMC, “Class Counsel”) have succeeded in securing a significant
17 common-fund recovery of \$46 million, which could increase to \$47.5 million if certain conditions
18 are met, for the Settlement Class. If approved by the Court, the Settlement will dismiss the Action in
19 its entirety and release all claims against Defendant Kaiser Foundation Health Plan, Inc. (“Defendant”
20 or “Kaiser”) and the other Released Parties. Notably, this is in addition to the substantial non-
21 monetary relief that Plaintiffs already achieved during the litigation, namely succeeding in having
22 Kaiser remove the offending internet technologies embedded in the Kaiser website (“Website”) and
23 mobile applications (“Apps”) and change its privacy notification practices. *See* Plaintiffs’
24 Supplemental Brief in Support of their Motion for Preliminary Approval, ECF No. 374, at 7-8 (citing
25 Declaration of Bill D. Vourthis in Support of Defendant’s Opposition to Plaintiffs’ Preliminary
26 Injunction Motion (ECF No. 96)). The Settlement and Plaintiffs’ efforts here deliver a clear benefit
27 and excellent result for the Settlement Class and warrants final approval under Rule 23(e)(2).
28

1 As described herein, the Settlement provides a substantial recovery for the Settlement Class
2 in a case that presented very serious risks of no monetary recovery at all. Over the course of the
3 Action, Plaintiffs and Class Counsel vigorously pursued relief on behalf of the Settlement Class.
4 These efforts included: (i) conducting an extensive investigation into the alleged misconduct and legal
5 research into potential causes of action under various laws and statutes; (ii) preparing an initial
6 complaint, two amended complaints, and one consolidated master complaint; (iii) submitting a
7 motion for preliminary injunction resulting in Kaiser’s removal of the offending code at issue in the
8 Action from its Website and Apps; (iv) opposing three motions to dismiss; (v) opposing three motions
9 to compel arbitration; (vi) participating in extensive discovery, including the review of nearly 40,000
10 documents produced by Defendant; (vii) Plaintiffs’ service and negotiation of subpoenas on nine third
11 parties; (viii) multiple days of in-person review of highly confidential designated source-code
12 material by experts; (ix) attending and arguing at six in-person discovery conferences before
13 Magistrate Judge Peter H. Kang addressing an array of pressing discovery disputes; and (x) engaging
14 in protracted settlement negotiations, including mediations before two separate, highly experienced
15 and respected retired federal judges who served as JAMS mediators. ¶¶ 9, 102. Through these efforts
16 (and others), at the time of settlement, Plaintiffs were steeped in the record and had a thorough
17 understanding of the strengths and weaknesses of the Settlement Class’s claims, enabling them to
18 fully evaluate the risks of continued litigation against the recovery obtained for the Settlement Class.

19 While Plaintiffs determinedly believe in the strength of their claims, the Settlement is in the
20 best interests of the Settlement Class when weighed against the very serious risk of continued
21 litigation—through class certification, summary judgment, a trial, and likely post-trial appeals. The
22 risks Plaintiffs faced were many. As this Court recognized in its October 24, 2025 Order regarding
23 preliminary approval: “The risk of continuing litigation is significant.” Order re Plaintiffs’ Motion
24 for Preliminary Approval, ECF No. 384, at 3 (“October 24 Order”). For example, this Court has
25 already raised questions as to whether “Kaiser allowed the code on its website and apps for the benefit
26 of the third parties (as opposed to itself).” *Id.* Kaiser has also asserted significant legal arguments
27 challenging Plaintiffs’ claims under federal law and various state statutory laws concerning privacy,
28 common law, and state constitutional law, which could have presented potential choice of law issues

1 for some of Plaintiffs' nationwide claims. ¶ 58. Kaiser has also argued that individualized issues, such
2 as arbitration of certain member's claims, predominated. ¶ 59. Privacy breach law is still developing
3 and, if Plaintiffs' statutory damages claims did not survive, Plaintiffs may only be left with nominal
4 damages or damages could be too individualized. ¶ 60. Despite Plaintiffs' confidence in their ability
5 to achieve class certification in this case, courts have recognized the significant risks that privacy and
6 data breach cases face at this stage. *See, e.g., Calhoun v. Google LLC*, 349 F.R.D. 588, 592 (N.D.
7 Cal. 2025) (denying class certification of damages class in privacy breach action); *In re TD*
8 *Ameritrade Acct. Holder Litig.*, 2011 WL 4079226, at *5 (N.D. Cal. Sep. 13, 2011) (“[D]efendants
9 in data breach cases have been successful in thwarting plaintiffs' efforts to obtain class certification.”)
10 (citing *In re TJX Cos. Retail Sec. Breach Litig.*, 246 F.R.D. 389, 397 (D. Mass. 2007) (refusing to
11 certify class of banks alleging damages resulting from retailer's data breach because of individual
12 causation issues)). Thus, even if Plaintiffs succeeded in proving liability, these arguments, if accepted,
13 had the potential to significantly diminish, or even eradicate, any recovery for the Settlement Class.

14 The Settlement was no easy feat and was reached only after negotiations between the Parties
15 spanning mediations before two highly experienced and respected retired federal judges. ¶¶ 9, 38-39,
16 43-44. The second mediation before retired U.S. Magistrate Judge for the Central District of
17 California, Hon. Jay C. Gandhi on May 13, 2025 culminated in the Parties' agreement in principle to
18 resolve the Action. ¶ 44. On May 14, 2025, the Parties filed a notice of preliminary settlement with
19 the Court. ECF No. 342. Importantly, there is no possibility of any part of the recovery reverting back
20 to Kaiser. All Settlement proceeds, after the deduction of Court-approved fees and costs, will be
21 distributed to Settlement Class Members who submit valid Claims, and any remaining funds (from
22 uncashed checks or otherwise) that are not cost effective to redistribute to eligible Settlement Class
23 Members will be contributed to the Institute for Public Health Innovation as set forth in the Plan of
24 Allocation, subject to Court approval. *See* ECF No. 390-1, Ex. G, § C.2.

25 Following hearings on October 23, 2025 and November 25, 2025 and additional submissions
26 and negotiations by and among the Parties and Objectors, the Court preliminarily approved the
27 Settlement, finding it likely that the Court will approve the Settlement as fair, reasonable, and
28 adequate at the final approval stage. ECF No. 393, ¶ 5. The Settlement has the full support of

1 Plaintiffs. *See* Exs.1A-H. Pursuant to the Preliminary Approval Order, notice of the Settlement will
2 be disseminated to Settlement Class Members no later than January 16, 2026. The notice program
3 will provide Settlement Class Members with the opportunity to submit a Claim in order to receive a
4 payment from the Settlement, as well as request exclusion from the Settlement Class or submit an
5 objection to the Settlement. The Settlement Class’s reaction to the Settlement will be addressed in
6 Plaintiffs’ reply submission on April 2, 2026, after the exclusion and objection deadline has passed.
7 ¶¶ 64, 95.

8 Given the foregoing considerations and the factors addressed below, Plaintiffs and Class
9 Counsel respectfully submit that: (i) the Settlement meets the standards for final approval under Rule
10 23, and is a fair, reasonable, and adequate result for the Settlement Class; and (ii) the Plan of
11 Allocation is a fair and reasonable method for equitably distributing the Net Settlement Fund to the
12 Settlement Class. Plaintiffs also request that the Court grant final certification to the Settlement Class
13 for purposes of effectuating the Settlement.

14 **II. THE SETTLEMENT WARRANTS FINAL APPROVAL**

15 Rule 23(e) requires judicial approval of any class action settlement. Fed. R. Civ. P. 23(e). A
16 district court has discretion to grant or not grant approval of the settlement. *See In re Volkswagen*
17 *“Clean Diesel” Mktg., Sales Pracs., & Prods. Liab. Litig.*, 895 F.3d 597, 611 (9th Cir. 2018). In
18 exercising this discretion, a court should be guided by the Ninth Circuit’s “strong judicial policy that
19 favors settlements, particularly where complex class action litigation is concerned.” *In re Hyundai &*
20 *Kia Fuel Econ. Litig.*, 926 F.3d 539, 556 (9th Cir. 2019); *see also Taafua v. Quantum Glob. Techs.,*
21 *LLC*, 2021 WL 579862, at *3 (N.D. Cal. Feb. 16, 2021) (“The Ninth Circuit has declared that a strong
22 judicial policy favors settlement of Rule 23 class actions.”).

23 Under Rule 23(e)(2), a district court may approve a class action settlement if it finds it to be
24 “fair, reasonable, and adequate.” *Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1121 n.10 (9th Cir.
25 2020). In making that determination, Rule 23(e)(2) provides that a court should consider whether:

- 26 (A) the class representatives and class counsel have adequately represented the class;
27 (B) the proposal was negotiated at arm’s length;
28 (C) the relief provided for the class is adequate, taking into account:

- 1 (i) the costs, risks, and delay of trial and appeal;
- 2 (ii) the effectiveness of any proposed method of distributing relief to the class,
3 including the method of processing class-member claims;
- 4 (iii) the terms of any proposed award of attorneys' fees, including timing of
5 payment; and
- 6 (iv) any agreement required to be identified under Rule 23(e)(3); and
- 7 (D) the proposal treats class members equitably relative to each other.

8 Consistent with Rule 23(e)(2)'s guidance, the Ninth Circuit has identified additional considerations
9 for courts to weigh in deciding whether to approve a class action settlement:

- 10 (1) the strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely
11 duration of further litigation; (3) the risk of maintaining class action status throughout
12 the trial; (4) the amount offered in settlement; (5) the extent of discovery completed
13 and the stage of the proceedings; (6) the experience and views of counsel; (7) the
14 presence of a governmental participant; and (8) the reaction of the class members to
15 the proposed settlement.

16 *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004); *see also In re Volkswagen*
17 *"Clean Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig.*, 2019 WL 2077847, at *1 (N.D. Cal. May
18 10, 2019) (approving settlement after considering both the "Rule 23(e)(2) factors . . . and the factors
19 identified in" Ninth Circuit case law).² Further, the Ninth Circuit has explained that a court's review
20 of a settlement should be "limited to the extent necessary to reach a reasoned judgment that the
21 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
22 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned."
23 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) (quoting *Officers for Just. v. Civil*
24 *Serv. Comm'n of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982)), *overruled on other grounds by Wal-Mart*
25 *Stores, Inc. v. Dukes*, 564 U.S. 338, 351 (2011); *see also Lane v. Facebook, Inc.*, 696 F.3d 811, 819
26 (9th Cir. 2012).

27 This Court considered the Rule 23(e)(2) factors in assessing the Settlement at the preliminary
28 approval stage and found that it would likely be able to finally approve the Settlement as fair,

² The "goal" of the 2018 amendments to Rule 23(e)(2) was "not to displace" any of the factors historically articulated by the various Circuits, "but rather to focus the court . . . on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." *Campbell*, 951 F.3d at 1121 n.10. "Accordingly, the Court [should] appl[y] the framework set forth in Rule 23, while continuing to draw guidance from the Ninth Circuit's factors and relevant precedent." *Hefler v. Wells Fargo & Co.*, 2018 WL 6619983, at *4 (N.D. Cal. Dec. 18, 2018).

1 reasonable, and adequate, subject to further consideration at the Fairness Hearing. ECF No. 393, ¶ 5.
2 Nothing has changed to alter the Court’s analysis in granting preliminary approval of the Settlement,
3 and the factors supporting the Court’s determination at preliminary approval continue to apply. *See,*
4 *e.g., In re Chrysler-Dodge-Jeep Ecodiesel® Mktg., Sales Pracs., & Prods. Liab. Litig.*, 2019 WL
5 2554232, at *2 (N.D. Cal. May 3, 2019) (finding “conclusions [made in granting preliminary
6 approval] stand and counsel equally in favor of final approval now”). Accordingly, the Court should
7 find the Settlement to be fair, reasonable, and adequate and grant final approval under the Rule
8 23(e)(2) factors and Ninth Circuit law.

9 **A. Plaintiffs and Class Counsel Have Adequately Represented the Settlement Class
10 in the Action**

11 The first factor that the Court must consider when evaluating a class action settlement is
12 whether Plaintiffs and Class Counsel “have adequately represented the class.” To determine
13 adequacy, “courts consider two questions: (1) do the named plaintiffs and their counsel have any
14 conflicts of interest with other class members, and (2) [have] the named plaintiffs and their counsel
15 prosecute[d] the action vigorously on behalf of the class?” *In re LendingClub Secs. Litig.*, 282 F.
16 Supp. 3d 1171, 1182 (N.D. Cal. 2017) (quoting *Hanlon*, 150 F.3d at 1020). On August 27, 2024, the
17 Court appointed KTMC and Carella Byrne as Interim Co-Lead Class Counsel pursuant to Rule 23(g)
18 (ECF No. 233) and on December 5, 2025 found it would be likely to appoint Plaintiffs as Class
19 Representatives and appoint KTMC and Carella Byrne as Class Counsel for purposes of this
20 settlement (ECF No. 393, at ¶ 4). ¶ 34. Plaintiffs and their counsel have amply demonstrated their
21 adequacy as representatives of the Settlement Class by devoting significant time to vigorously
22 litigating this Action against Defendant and its highly proficient counsel—Sheppard, Mullin, Richter
23 & Hampton LLP and Crowell & Moring LLP—for two years. This factor weighs in favor of the
24 Settlement.

25 Plaintiffs’ claims, all of which are based on Plaintiffs’ experiences that match those of the
26 millions of other Settlement Class Members, are typical of other Settlement Class Members, and
27 Plaintiffs have no interests antagonistic to the Settlement Class. *See Ellis v. Costco Wholesale Corp.*,
28 657 F.3d 970, 985 (9th Cir. 2011) (adequacy of representation depends on “an absence of

1 antagonism” and “a sharing of interest” between representatives and absent class members). As
2 argued and briefed at length in connection with Preliminary Approval, and incorporated into the terms
3 of the Settlement, Kaiser Permanente Members Who Have Chosen to Arbitrate are excluded from the
4 Settlement Class. *See* ECF No. 390.

5 In addition, Plaintiffs—like all other Settlement Class Members—have an interest in
6 obtaining the largest possible recovery from Kaiser. *See In re Polaroid ERISA Litig.*, 240 F.R.D. 65,
7 77 (S.D.N.Y. 2006) (“Where plaintiffs and class members share the common goal of maximizing
8 recovery, there is no conflict of interest between the class representatives and other class members.”).
9 As detailed in their supporting Declarations, Plaintiffs have actively participated in the prosecution
10 and resolution of the Action. Plaintiffs provided Class Counsel with necessary factual information—
11 allowing Class Counsel’s expert to conduct extensive searches of their computers and mobile devices
12 in order to obtain specific information about the personal and confidential information (i.e., patient
13 status, identifying information, personal and sensitive health information, and confidential
14 communications with health care providers) that Plaintiffs allege Kaiser was improperly sharing with
15 third parties. ¶¶ 17-18. Plaintiffs also reviewed relevant Court pleadings and other case documents,
16 had ongoing communications with Class Counsel regarding various issues pertaining to this case as
17 well as strategic litigation decisions, searched for and gathered documents and other information in
18 response to Defendant’s discovery requests, and conferred with Class Counsel during the Parties’
19 discussions regarding the possible resolution of the Action. *See* Ex. 1A, ¶¶ 4-9; Ex. 1B, ¶¶ 4-9; Ex.
20 1C, ¶¶ 4-9; Ex. 1D, ¶¶ 4-9; Ex. 1E, ¶¶ 4-9; Ex. 1F, ¶¶ 4-9; Ex. 1G, ¶¶ 4-9; Ex. 1H, ¶¶ 4-8.

21 Furthermore, Plaintiffs retained counsel who are highly experienced in complex litigation and
22 have successfully prosecuted many significant actions throughout the United States. *See* Graden Decl.
23 Ex. 7; Ex. 4. *See Churchill*, 361 F.3d at 576-77 (instructing courts to consider “*experience and views*
24 *of counsel*”) (emphasis in original). Here, Class Counsel’s work on this case began over a year before
25 their initial appointment as Interim Co-Lead Class Counsel in August 2024 and has included
26 preparing pleadings, addressing issues of appropriate representative plaintiffs, consulting with
27 experts, briefing three motions to dismiss and three motions to compel arbitration, evaluating ongoing
28 discovery, preparing for and attending mediations, including analyzing documents prepared for or

1 produced in connection therewith, evaluating options for settlement benefits that meet the needs of
2 the Settlement Class, negotiating the terms of the Settlement over the course of several months (and
3 renegotiating certain of these terms in connection with preliminary approval), and expending the
4 resources necessary to finance every aspect of the litigation. ¶ 9. These efforts all contributed to the
5 guaranteed \$46 million recovery (with the possibility of up to \$47.5 million) achieved for the
6 Settlement Class, as well as the removal of the offending code from Kaiser’s Website and Apps and
7 changes to Kaiser’s privacy policies. ¶ 6.

8 **B. The Settlement Is the Product of Arm’s-Length Negotiations Between**
9 **Experienced Counsel with the Assistance of Experienced Neutrals**

10 In determining approval of a class action settlement, courts also consider whether the
11 settlement was “negotiated at arm’s length.” Fed. R. Civ. P. 23(e)(2)(B). This factor concerns the
12 circumstances bearing on the procedural fairness of the settlement, including: (i) counsel’s
13 understanding of the strengths and weakness of the case based on “the extent of discovery completed
14 and the stage of the proceedings,” *Hanlon*, 150 F.3d at 1026; (ii) the presence or absence of any
15 indicia of collusion (*In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011));
16 and (iii) the involvement of a mediator. *See Joh v. Am. Income Life Ins. Co.*, 2020 WL 109067, at *7
17 (N.D. Cal. Jan. 9, 2020) (“The involvement of a neutral mediator is evidence that settlement
18 negotiations were conducted at arm’s length.”). Plaintiffs satisfy this factor, which supports final
19 approval of the Settlement.

20 Here, the Parties engaged in mediation sessions with two highly-experienced mediators. The
21 first mediation before retired U.S. District Judge for the Northern District of Illinois, Hon. Wayne R.
22 Andersen was held in October of 2024 over two-days. ¶ 43. The Parties did not reach an agreement
23 to resolve the Action at that time. Following the October 2024 mediation, litigation continued in
24 earnest, and approximately seven months later the Parties agreed to participate in a second mediation
25 before retired U.S. Magistrate Judge for the Central District of California, Hon. Jay C. Gandhi. ¶ 44.
26 This second mediation, held on May 13, 2025, was hard fought and ultimately resulted in the
27 resolution of the Action. *Id.*

1 As courts in this District have found, the fact that the Parties reached a settlement through
2 arm's-length negotiations between experienced counsel creates a presumption of fairness. *See In re*
3 *Netflix Priv. Litig.*, 2013 WL 1120801, at *4 (N.D. Cal. Mar. 18, 2013) (“Courts have afforded a
4 presumption of fairness and reasonableness of a settlement agreement where that agreement was the
5 product of non-collusive, arms’ length negotiations conducted by capable and experienced counsel.”).
6 The involvement of two experienced mediators, retired federal Judges Anderson and Ghandi, in the
7 settlement process further “confirms that the settlement is non-collusive.” *In re Anthem, Inc. Data*
8 *Breach Litig.*, 327 F.R.D. 299, 327 (N.D. Cal. 2018) (quoting *G. F. v. Contra Costa Cnty.*, 2015 WL
9 4606078, at *13 (N.D. Cal. July 30, 2015)). *See also Hefler v. Wells Fargo & Co.*, 2018 WL 4207245,
10 at *9 (N.D. Cal. Sep. 4. 2018) (“[I]n light of the fact that the Settlement was reached after the parties
11 engaged in motion practice and participated in multiple days of formal mediation, the Court concludes
12 that the negotiations and agreement were non-collusive.”).

13 Given their extensive litigation efforts, Plaintiffs were fully informed about the value of the
14 Settlement Class’s claims and the propriety of resolving the Action when they did. Plaintiffs’
15 thorough understanding of the strengths and weaknesses of the case was further informed by the
16 Parties’ extensive settlement negotiations. ¶ 10. *See Stewart v. Applied Materials, Inc.*, 2017 WL
17 3670711, at *6 (N.D. Cal. Aug. 25, 2017) (quoting *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d
18 1036, 1043 (N.D. Cal. 2008)) (“The recommendations of plaintiffs’ counsel should be given a
19 presumption of reasonableness.”). Here, Class Counsel had the necessary understanding of the merits
20 and risks of the Action to support their conclusion that the Settlement is a favorable result for the
21 Settlement Class.

22 Finally, the Settlement has none of the indicia of possible collusion identified by the Ninth
23 Circuit, such as a “clear sailing” fee agreement or a provision allowing settlement proceeds to revert
24 to Kaiser. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d at 947. Indeed, the Settlement is
25 non-reversionary, meaning, if approved, Kaiser will have no right to the return of any portion of the
26 Settlement Fund based on the amounts to be paid to Authorized Claimants. *See* ECF No. 390-1, Ex.
27 G, Section C.2. Moreover, “[n]othing in th[e] Stipulation or Settlement shall be construed to prohibit
28

1 the Kaiser Foundation Health Plan from opposing a request for an award of attorneys' fees and costs
2 []." Stip., ¶ 2.13.

3 In short, the Settlement was reached after arm's-length negotiations assisted by experienced
4 mediators, conducted by well-informed counsel, and was not a product of fraud, overreaching, or
5 collusion among the Parties.

6 **C. The Settlement Provides Adequate Relief, Considering the Costs, Risks, and**
7 **Delay of Litigation and the Other Rule 23(e)(2) Factors**

8 The remaining Rule 23(e)(2) factors overlap considerably with those articulated by the Ninth
9 Circuit, and entail "a 'substantive' review of the terms of the proposed settlement" that evaluate the
10 fairness of the "relief that the settlement is expected to provide" to the Settlement Class. Fed. R. Civ.
11 P. 23(e)(2) advisory committee's note to 2018 amendment; *see also Churchill*, 361 F.3d at 575-77.
12 These factors weigh in favor of the Settlement.

13 **1. The Amount Offered in Settlement**

14 "The critical component of any settlement is the amount of relief obtained by the class."
15 *Destefano v. Zynga, Inc.*, 2016 WL 537946, at *11 (N.D. Cal. Feb. 11, 2016). By definition, a
16 settlement "embodies a compromise; in exchange for the saving of cost and elimination of risk, the
17 parties each give up something they might have won had they proceeded with litigation." *Officers for*
18 *Just.*, 688 F.2d at 624 (quoting *United States v. Armour & Co.*, 402 U.S. 673, 681-82 (1971)); *see*
19 *also Mild v. PPG Indus., Inc.*, 2019 WL 3345714, at *6 (C.D. Cal. July 25, 2019) ("Based on the
20 significant risks of continued litigation and the Settlement amount, the Court finds that the amount
21 offered for settlement is fair.").

22 The \$46 million common fund, which could increase to \$47.5 million if certain conditions are
23 met, represents a favorable result for the Settlement Class. The recovery provides a near-term,
24 tangible cash benefit to the Settlement Class (namely a payment currently estimated to range between
25 \$20 and \$40 per Settlement Class member) and "[is] preferable to lengthy and expensive litigation
26 with uncertain results." *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D.
27 Cal. 2004) (quoting 4 A Conte & H. Newberg, *Newberg on Class Actions*, § 11:50 at 155 (4th
28 ed.2002)). This substantial amount also serves as a deterrent against similar conduct recurring in the

1 future, both within and outside of Kaiser. *See In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. at
2 322 (“The . . . settlement amount . . . sends a strong message to deter discrimination by other
3 employers.”) (quoting *United States v. N.J.*, 1995 WL 1943013, at *14 (D.N.J. Mar. 14, 1995)).
4 Moreover, in terms of the Settlement Amount, Plaintiffs assert that, if successful at trial, there is a
5 relatively wide range of possible recoveries—ranging from a significant fraction of the Settlement
6 Amount at the low end if only nominal damages were awarded to multiples of the Settlement Amount
7 at the high end if the Court were to find that Plaintiffs had successfully re-pled claims providing for
8 statutory damages. *See In re 3D Sys. Sec. Litig.*, 2024 WL 50909, at *12 (E.D.N.Y. Jan. 4, 2024)
9 (“Based on the substantial litigation risks . . . and because the settlement here was reached with the
10 assistance of an experienced mediator, the Court concludes that the settlement amount is within a
11 reasonable range.”). Plaintiffs and Class Counsel submit that the recovery obtained for the Settlement
12 Class is within a reasonable recovery range (*see* ECF No. 345, Ex. 1) and is particularly favorable in
13 light of the significant challenges Plaintiffs would face if the Action continued. Considered against
14 the risks involved with continued prosecution of this Action, the amount provided by the Settlement
15 is fair, reasonable, and adequate.

16 2. The Strengths and Weaknesses of Plaintiffs’ Case

17 When evaluating proposed class action settlements, courts consider the strengths and the
18 weaknesses of the case and the risks of further litigation. *See In re Mego Fin. Corp. Sec. Litig.*, 213
19 F.3d 454, 458 (9th Cir. 2000). To determine whether the Settlement is fair, reasonable, and adequate,
20 the Court “must balance the risks of continued litigation, including the strengths and weaknesses of
21 plaintiff’s case, against the benefits afforded to class members, including the immediacy and certainty
22 of recovery.” *Knapp v. Art.com, Inc.*, 283 F. Supp. 3d 823, 831 (N.D. Cal. 2017).

23 While Plaintiffs and Class Counsel believe they had meritorious claims and would have
24 prevailed had the Action continued, Defendants raised various factual and legal defenses to Plaintiffs’
25 claims. ¶¶ 53-61. Indeed, as this Court previously recognized: “The risk of continuing litigation is
26 significant.” October 24 Order, at 3. Plaintiffs and Class Counsel also recognize that there are many
27 instances where plaintiffs believed their claims were meritorious, only to lose at trial or on appeal.
28 *Nobles v. MBNA Corp.*, 2009 WL 1854965, at *2 (N.D. Cal. June 29, 2009) (noting that, although

1 “[p]laintiff’s claim has survived a motion to dismiss, [] success is not guaranteed if this matter were
2 to proceed to jury trial”); *see, e.g., In re Apollo Grp., Inc. Sec. Litig.*, 2010 WL 5927988, at *1 (9th
3 Cir. June 23, 2010) (granting judgment to defendants and nullifying jury verdict for plaintiff
4 following trial).

5 Here, Plaintiffs’ claims are brought under federal law as well as various state statutory laws
6 concerning privacy, common law, and state constitutional law. ¶ 57. Throughout the Action,
7 Defendants asserted numerous legal arguments challenging Plaintiffs’ claims under these statutes.
8 *See* ECF Nos. 205, 223, 303, 334. As such, choice of law issues presented a real hurdle for some of
9 Plaintiffs’ nationwide claims. *See* 7AA Charles Alan Wright & Arthur R. Miller, *Fed. Prac. & Proc.*
10 *Civ.* § 1780.1 (3d ed.) (noting that class actions requiring application of multiple state laws can
11 implicate Rule 23(b)(3)’s requirements of predominance and superiority). For other claims,
12 Defendants would argue that individualized issues predominate.

13 Throughout the Action, Defendants repeatedly sought to compel members to arbitration, relief
14 which the Court granted (ECF Nos. 119, 335), posing a considerable risk for certain Settlement Class
15 Members. Further, even if Plaintiffs successfully certified one or more litigation classes, there is a
16 risk of decertification. *See In re Netflix Priv. Litig.*, 2013 WL 1120801, at *6 (“The notion that a
17 district court could decertify a class at any time, is one that weighs in favor of settlement.”). Plaintiffs
18 are also cognizant of the fact that data breach cases face certain risks at this stage. Notably, Judge
19 Gonzalez Rogers recently denied class certification on a Rule 23(b)(3) damages class in a privacy
20 case, finding that individualized issues relating to Google’s implied consent defense would
21 overwhelm the damages claims for all causes of action. *Calhoun*, 349 F.R.D. at 598. *See also In re*
22 *TD Ameritrade Acct. Holder Litig.*, 2011 WL 4079226, at *5 (“[D]efendants in data breach cases
23 have been successful in thwarting plaintiffs’ efforts to obtain class certification.”) (citing *In re TJX*
24 *Cos. Retail Sec. Breach Litig.*, 246 F.R.D. at 397 (refusing to certify class of banks alleging damages
25 resulting from retailer’s data breach because of individual causation issues)); Order at 5-6,
26 *Stollenwerk v. Tri-West Healthcare All.*, No. 03-cv-0185 (D. Ariz. June 10, 2008), ECF No. 139
27 (finding individualized issues relating to proof of causation predominate over common questions
28 involving theft of computer equipment containing personal information); *see also In re Fortra File*

1 *Transfer Software Data Sec. Breach Litig.*, 794 F. Supp. 3d 1203, 1220 (S.D. Fla. 2025) (quoting *In*
 2 *re Mednax Servs. Inc., Customer Data Sec. Breach Litig.*, 2024 WL 1554329, at *7 (S.D. Fla. Apr.
 3 10, 2024)) (“[D]ata breach class actions are risky cases.”).³ When considering the potential risks of
 4 continued litigation, the Settlement provides a significant recovery.

5 Class Counsel carefully analyzed each of Kaiser’s potential defenses and related risks prior
 6 to agreeing to the Settlement. If realized, any of these risks could have resulted in no recovery for
 7 Settlement Class Members. By resolving the Action through the Settlement, in contrast, Plaintiffs
 8 have guaranteed the Settlement Class a recovery of \$46 million (with the potential of increasing to
 9 \$47.5 million). This factor supports the Settlement.

10 3. The Complexity, Expense, and Duration of Continued Litigation

11 In addition to the risk of continued litigation, in evaluating the Settlement’s fairness, the
 12 “expense, complexity, and likely duration of further litigation,” *Churchill*, 361 F.3d at 576, or “delay
 13 of trial and appeal” should be taken into account. Fed. R. Civ. P. 23(e)(2)(C)(i). “Generally, unless
 14 the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and
 15 expensive litigation with uncertain results.” *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 587
 16 (N.D. Cal. 2015); *see also Fleming v. Impax Lab’ys Inc.*, 2022 WL 2789496, at *5 (N.D. Cal. July
 17 15, 2022) (“Approval of a class settlement is appropriate when plaintiffs must overcome significant
 18 barriers to make their case.”). The highly contested motion practice and substantial discovery efforts
 19 in this Action, as well as the issues presented and resolved during the preliminary approval process
 20 itself, are a testament to the complexity of the factual and legal issues present in this case.

21
 22
 23 ³ Because the law on privacy breach is still developing, plaintiffs bringing privacy breach cases face
 24 more risks and uncertainty in class action litigation. *See In re Anthem, Inc. Data Breach Litig.*, 327
 25 F.R.D. at 317 (“Data-breach litigation is in its infancy with threshold issues still playing out in the
 26 courts.”). For example, “damages methodologies in data breach cases are largely untested and have
 27 yet to be presented to a jury.” *Hashemi v. Bosley, Inc.*, 2022 WL 2155117, at *7 (C.D. Cal. Feb. 22,
 28 2022). As the *Hashemi* court noted, “it is difficult to estimate Plaintiffs’ expected recovery . . . given
 the relative dearth of precedent and exemplar cases that have proceeded to trial.” *Id.* Given these
 uncertainties, “[c]ourts have noted that legal uncertainty supports approval of a settlement.” *In re*
Anthem, 327 F.R.D. at 317; *see Browning v. Yahoo! Inc.*, 2007 WL 4105971, at *10 (N.D. Cal. Nov.
 16, 2007) (noting “legal uncertainties at the time of settlement—particularly those which go to
 fundamental legal issues—favor approval.”).

1 Class Counsel also incurred considerable expenses in prosecuting the Action, including the
2 cost of Plaintiffs' experts and consultants, their two formal mediations, online research, data hosting,
3 and travel for, among other things, the Court's monthly in-person status conferences. These expenses
4 would have increased significantly had the case not settled.

5 In contrast, the Settlement avoids the risk, cost, and delay of further litigation while providing
6 a certain, near-term recovery for the Settlement Class. *See Hartless v. Clorox Co.*, 273 F.R.D. 630,
7 640 (S.D. Cal. 2011), *aff'd in part*, 473 F. App'x 716 (9th Cir. 2012) ("Considering these risks,
8 expenses and delays, an immediate and certain recovery for class members . . . favors settlement of
9 this action."). This factor supports final approval of the Settlement.

10 **4. Risk of Maintaining Class Action Status**

11 Given the posture of the case at the time of settlement, Plaintiffs had not moved for class
12 certification. And, as noted above, privacy breach cases face significant risks at this stage. While
13 Plaintiffs are confident that, had the Action continued, they would have ultimately obtained
14 certification of a class, the Settlement removes this uncertainty. *See In re OmniVision Techs., Inc.*,
15 559 F. Supp. 2d at 1041-42 ("If the Court were to refuse certification, the unrepresented potential
16 plaintiffs would likely lose their chance at recovery entirely. . . As Defendants agree to the class
17 certification for the purposes of the Settlement, there is much less risk of anyone who may have
18 actually been injured going away empty-handed."). This factor favors the Settlement.⁴

19 **5. The Extent of Discovery Completed and the Stage of Proceedings**

20 Courts next consider the stage of the proceedings and the amount of information available to
21 the parties to assess the strengths and weaknesses of their case. *See, e.g., Mego Fin.*, 213 F. 3d at 459;
22 *In re Rambus Inc. Deriv. Litig.*, 2009 WL 166689, at *2 (N.D. Cal. Jan. 20, 2009). Moreover, "[a]
23 settlement following sufficient discovery and genuine arms-length negotiation is presumed fair."

24
25
26 ⁴ This factor would support the Settlement even if Plaintiffs had obtained class certification, as the
27 Court may exercise its discretion to re-evaluate the appropriateness of class certification at any time.
28 Fed. R. Civ. P. 23(c)(1)(C) ("An order that grants or denies class certification may be altered or
amended before final judgment."); *see also Omnivision*, 559 F. Supp. 2d at 1041 ("[T]here is no
guarantee the certification would survive through trial, as Defendants might have sought
decertification or modification of the class.").

1 *Velazquez v. Int’l Marine & Indus. Applicators, LLC*, 2018 WL 828199, at *5 (S.D. Cal. Feb. 9, 2018)
2 (quoting *DIRECTV, Inc.*, 221 F.R.D. at 528).

3 The Settlement was reached after two years of contentious litigation. From the
4 commencement of this Action on June 9, 2023 to the Parties’ agreement to resolve the Action after
5 their second mediation in May 2025, the Parties engaged in substantial discovery efforts. ¶¶ 21-42.
6 Before reaching the Settlement, the Parties participated in six discovery management conferences,
7 served written discovery requests followed by numerous meet-and-confers, engaged in multi-day
8 expert-led review of highly confidential source code, presented several oral arguments on discovery
9 disputes before Magistrate Judge Kang, undertook third-party discovery, exchanged expert reports in
10 connection with Plaintiffs’ Motion for Preliminary Injunction, and extensively negotiated ESI
11 keywords and custodians over two discovery phases which allowed Class Counsel to review and
12 analyze tens of thousands of documents. ¶¶ 26-41.

13 In addition, Plaintiffs engaged in substantial motion practice, litigating a motion for
14 preliminary injunction, three motions to dismiss, and three motions to compel arbitration. *See*
15 *generally* ¶¶ 19-42. This record demonstrates that, at the time of settlement, Plaintiffs and Class
16 Counsel had more than “enough information to make an informed decision about settlement based
17 on the strengths and weaknesses” of their case. *In re Amgen Inc. Secs. Litig.*, 2016 WL 10571773, at
18 *4 (C.D. Cal. Oct. 25, 2016) (finding “in favor of granting final approval” where discovery was
19 complete and “case was on the verge of trial”).

20 **6. The Experience and Views of Counsel**

21 The informed opinion of experienced Class Counsel that the Settlement is in the best interest
22 of the Settlement Class should be afforded significant weight. *DIRECTV, Inc.*, 221 F.R.D. at 528
23 (“Great weight is accorded to the recommendation of counsel . . . because parties represented by
24 competent counsel are better positioned than courts to produce a settlement that fairly reflects each
25 party’s expected outcome in the litigation.”); *Quiruz v. Specialty Commodities, Inc.*, 2020 WL
26 6562334, at *7 (N.D. Cal. Nov. 9, 2020) (quoting *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15,
27 18 (N.D. Cal. 1980)) (“[T]he fact that experienced counsel involved in the case approved the
28 settlement after hard-fought negotiations is entitled to considerable weight.”). As described above,

1 Class Counsel had a thorough understanding of the merits and risks of the Action prior to agreeing to
2 the Settlement. Class Counsel also have extensive prior experience in complex class action litigation
3 (*see* Graden Decl., Ex. 4 and Ex. 7). Class Counsel’s conviction that the Settlement is an excellent
4 outcome thus further favors approval of the Settlement.

5 **7. Existence of a Governmental Investigation**

6 Plaintiffs and Class Counsel are unaware of any active governmental investigation regarding
7 the conduct at issue in this Action. As such, the Settlement is the *only* recovery for the Settlement
8 Class related to the allegations in this case. This factor strongly supports final approval. Through
9 discovery, it was disclosed that Kaiser was in communication with certain governmental regulators
10 regarding code and/or cookies on the Website or Apps. *See* ECF No. 188, at 8-9. Additionally, Kaiser
11 confirmed a privacy breach to state and federal regulators on April 12, 2024—just one day after the
12 Court denied in part Kaiser’s motion to dismiss Plaintiffs’ First Amended Class Action Complaint
13 (“FAC”). *See* ECF No. 127. However, to date, it does not appear that any of these regulators have
14 ongoing, active investigations regarding the privacy breach. Accordingly, this private action provides
15 the only form of relief for the vast majority of Settlement Class members who are not individually
16 represented by their own counsel.

17 Likewise, pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715(b),
18 Defendants were required to provide notice of the Settlement to appropriate state and federal officials
19 within 10 days from when the Stipulation was initially filed with the Court on August 19, 2025 (Stip.¶
20 2.29) and, to date, Plaintiffs have not been advised of any objections by such officials. Courts have
21 found the absence of objections by state or federal officials after receiving notice pursuant to CAFA
22 to weigh in favor of final approval. *See In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., &*
23 *Prods. Liab. Litig.*, 229 F. Supp. 3d 1052, 1067 (N.D. Cal. 2017) (quoting *Garner v. State Farm Mut.*
24 *Auto. Ins. Co.*, 2010 WL 1687832, at *14 (N.D. Cal. Apr. 22, 2010)) (“Although CAFA does not
25 create an affirmative duty for either state or federal officials to take any action in response to a class
26 action settlement, CAFA presumes that, once put on notice, state or federal officials will raise any
27 concerns that they may have during the normal course of the class action settlement procedures.”).

28

1 **8. The Reaction of Settlement Class Members to Date**

2 “In addition to the enumerated fairness factors of Rule 23(e)(2), courts within the Ninth
3 Circuit typically consider the reaction of the class members to the proposed settlement.” *In re Google*
4 *LLC St. View Elec. Commc’ns Litig.*, 2020 WL 1288377, at *15 (N.D. Cal. Mar. 18, 2020) (quoting
5 *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d at 946); *see also Churchill*, 361 F.3d at 577.
6 Moreover, “[a] court may appropriately infer that a class action settlement is fair, adequate, and
7 reasonable when few class members object to it.” *Kuraica v. Dropbox, Inc.*, 2021 WL 5826228, at
8 *5 (N.D. Cal. Dec. 8, 2021) (quoting *Knapp*, 283 F. Supp. 3d at 833-34). Here, notice of the
9 Settlement is scheduled to be disseminated to the Settlement Class by January 16, 2026. At that time,
10 Settlement Class Members will be able to object to the Settlement if they choose to do so. Any
11 objections will be addressed in Plaintiffs’ reply submission to be filed with the Court on April 2, 2026.

12 **D. The Remaining Rule 23(e)(2) Factors Also Support Final Approval**

13 In evaluating the Settlement pursuant to Rule 23(e)(2), courts are instructed to also consider:
14 (i) the effectiveness of the proposed method of distributing the relief provided to the class, including
15 the method of processing class member claims; (ii) the terms of any proposed award of attorney’s
16 fees, including the timing of payment; (iii) any other agreement made in connection with the proposed
17 settlement; and (iv) whether class members are treated equitably relative to each other. Fed. R. Civ.
18 P. 23(e)(2)(C)(ii)-(iv), (e)(2)(D). These additional factors also weigh in favor of approval.

19 *First*, the proposed method of distribution and claims processing ensures equitable treatment
20 of the Settlement Class Members. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii), (e)(2)(D). The Settlement does
21 not improperly grant preferential treatment to Plaintiffs or any Settlement Class Member, and the Net
22 Settlement Fund will be distributed *pro rata* by dividing the Net Settlement Fund by the total number
23 of valid Claims. Importantly, the Settlement is non-reversionary, meaning that, if approved, Kaiser
24 will have no right to the return of any portion of the Settlement Fund based on the amounts to be paid
25 to Settlement Class Members. *See* ECF No. 390-1, Ex. G. § C.2.

26 *Second*, the relief provided by the Settlement remains adequate upon consideration of the
27 terms of the proposed award of attorneys’ fees and litigation expenses incurred in prosecuting this
28 Action, including the timing of any such Court-approved payments. *See* Fed. R. Civ. P.

1 23(e)(2)(C)(iii). And, approval of attorneys’ fees is entirely separate from approval of the Settlement
2 and neither Plaintiffs nor Class Counsel may cancel or terminate the Settlement based on this Court’s
3 or any appellate court’s ruling with respect to attorneys’ fees. *See* ECF No. 390-1, ¶ 5.2. In any event,
4 as more fully explained in Plaintiffs’ Motion for Attorneys’ Fees, Expenses, and Service Awards filed
5 concurrently herewith (“Fee and Expense Memorandum”), the requested attorneys’ fees of 33% of
6 the Settlement Fund are reasonable in light of Class Counsel’s efforts in prosecuting this Action,
7 which culminated in significant monetary and non-monetary recovery, and accounts for the
8 significant risks shouldered by Class Counsel.⁵ Additionally, the 33% request is supported by other
9 fee awards in this Circuit and throughout the country. *See* Fee and Expense Memorandum, § I.C.

10 *Third*, as part of the Settlement, the Parties have agreed to a confidential provision that gives
11 Defendant the option to terminate the Settlement in the event that requests for exclusion exceed
12 certain agreed-upon conditions. *See* Fed. R. Civ. P. 23(a)(3). This type of agreement has no negative
13 impact on the fairness of the Settlement and in this case, may result in an increase in the Settlement
14 Amount—up to \$47.5 million—and a greater recovery for the Settlement Class. *See Hefler*, 2018 WL
15 4207245, at *11 (“The existence of a termination option triggered by the number of class members
16 who opt out of the Settlement does not by itself render the Settlement unfair.”). This confidential
17 agreement was submitted to the Court on October 6, 2025. *See* ECF No. 374, at 3-4.

18 For the reasons set forth above and in the Graden Declaration, the Settlement is fair,
19 reasonable, and adequate when evaluated under any standard, and, therefore, warrants the Court’s
20 final approval.

21 **III. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE AND WARRANTS**
22 **FINAL APPROVAL**

23 When evaluating the proposed Settlement, the Court must also determine whether the Plan of
24 Allocation is fair and reasonable to the Settlement Class. A plan for allocating settlement proceeds
25 under Rule 23 is evaluated under the same standard of review applicable to the settlement as a

26 ⁵ Class Counsel also seek payment of Plaintiffs’ Counsel’s litigation expenses in the amount of
27 \$605,103.06. ¶ 15. Class Counsel’s application for attorneys’ fees and litigation expenses also
28 includes a request for Service Awards to Plaintiffs in the aggregate amount of \$40,000 (i.e., \$5,000
each) as compensation for Plaintiffs’ service on behalf of the Settlement Class as well as the risks
associated with their involvement in the Action.

1 whole—the plan must be fair, reasonable, and adequate. *See, e.g., Class Plaintiffs v. City of Seattle*,
2 955 F.2d 1268, 1284-85 (9th Cir. 1992). Moreover, “an allocation formula need only have a
3 reasonable, rational basis, particularly if recommended by experienced and competent counsel.”
4 *Nguyen v. Radiant Pharm. Corp.*, 2014 WL 1802293, at *5 (C.D. Cal. May 6, 2014) (quoting *In re*
5 *Broadcom Corp. Secs. Litig.*, 2005 U.S. Dist. LEXIS 41976 (C.D. Cal. Sep. 12, 2005)).

6 Here, the Plan of Allocation will result in a fair and equitable distribution of the Settlement
7 proceeds among Settlement Class Members who submit a valid Claim Form. *See* ECF No. 390-1, Ex.
8 F. The Claim Form requires Settlement Class Members to provide certain information, including their
9 Identification Number assigned by the Settlement Administrator and their preferred payment method.
10 *See id.* at §§ 1, 3. Settlement Class Members will receive his or her *pro rata* share of the Net
11 Settlement Fund, which will be calculated by dividing the Net Settlement Fund by the total number
12 of valid Claim Forms received.

13 Payments will be issued to Authorized Claimants following the Effective Date. ECF No. 390-
14 1, Ex. G. If any funds remain following the initial distribution of the Net Settlement Fund, as a result
15 of uncashed or returned checks or other reasons, and a redistribution is determined to be cost effective
16 by Class Counsel in consultation with the Settlement Administrator, these funds will be redistributed
17 to Authorized Claimants on a *pro rata* basis. *See Id.* If it is determined that a redistribution of the
18 funds remaining in the Net Settlement Fund is not cost effective, the funds will be contributed, subject
19 to Court approval, to Institute for Public Health Innovation (“IPHI”). *Id.* The Parties do not have a
20 relationship with this organization. *See* ECF No. 345, at 26. The IPHI is the fiscal sponsor for the
21 Common Health Coalition, which engages in work regarding the exchange of data between health
22 care and public health systems, coordination between health care and public health, emergency
23 preparedness, and disease detection. *See* Common Health Coalition,
24 <https://commonhealthcoalition.org/> (last visited Dec. 22, 2025).

25 In accordance with the Court’s Preliminary Approval Order, the Settlement Administrator
26 will conduct an extensive notice campaign advising Settlement Class Members of the Plan of
27 Allocation and their right to object to the Plan of Allocation. Plaintiffs will address any objections to
28 the Plan of Allocation in their reply submission to be filed with the Court on April 2, 2026. Class

1 Counsel and Plaintiffs believe the Plan of Allocation is fair, reasonable, and adequate and warrants
2 approval. Fed. R. Civ. P. 23(e)(2)(C)(ii), (e)(2)(D).

3 **IV. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS**

4 As set forth in Plaintiffs' Motion for Preliminary Approval, the Settlement Class satisfies all
5 of the requirements of Rules 23(a) and (b)(3). ECF No. 345 at 20-25; *see also* ECF No. 393, ¶¶ 2-4
6 (finding the Court will likely be able to certify the Settlement Class for purposes of the proposed
7 Settlement). None of the facts supporting certification of the Settlement Class have changed since
8 Plaintiffs submitted their preliminary approval motion and the Court entered the Preliminary
9 Approval Order. Accordingly, Plaintiffs respectfully request that the Court certify the Settlement
10 Class under Rules 23(a) and (b)(3) for purposes of effectuating the Settlement.

11 **V. NOTICE OF THE SETTLEMENT WILL SATISFY THE REQUIREMENTS OF**
12 **RULE 23 AND DUE PROCESS**

13 Plaintiffs are in the process of providing the Settlement Class with adequate notice of the
14 Settlement. Here, notice, as outlined in the Preliminary Approval Order, will satisfy both: (i) Rule 23,
15 as it will be “the best notice . . . practicable under the circumstances” and directed “in a reasonable
16 manner to all class members who would be bound by the” Settlement. Fed. R. Civ. P. 23(c)(2)(B) &
17 (e)(1)(B); *see also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-75 (1974); and (ii) due process,
18 as it was “reasonably calculated, under all the circumstances, to apprise interested parties of the
19 pendency of the action and afford them an opportunity to present their objections,” *Mullane v. Cent.*
20 *Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950); *Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir.
21 1994).

22 In accordance with the schedule set forth in the Preliminary Approval Order, the Court-
23 appointed Settlement Administrator, Strategic Claims Services (“SCS”), will email or mail the Short
24 Form Notice to Settlement Class Members as set forth the May 2024 Notice List provided by Kaiser.
25 ECF No. 393, ¶¶ 8-9. In connection with the emailing/ mailing of the Short Form Notice, SCS will
26 develop a website dedicated to the Settlement, <http://www.KaiserPrivacySettlement.com>, where
27 Settlement-related information and deadlines, including copies of the Long Form Notice, Claim
28 Form, and Plan of Allocation will be posted. *Id.* at ¶ 19. In addition, under the Settlement, Kaiser was

1 required to issue notice pursuant to CAFA within ten (10) days from filing the Settlement, proof of
2 which will be filed with the court at least forty-five (45) days before the Fairness Hearing. ECF No.
3 390-1, at ¶ 2.29.

4 Collectively, the Short and Long Form Notices will apprise the Settlement Class Members of:

5 (i) [T]he nature of the action; (ii) the definition of the class certified; (iii) the class
6 claims, issues, or defenses; (iv) that a class member may enter an appearance through
7 an attorney if the member so desires; (v) that the court will exclude from the class any
8 member who requests exclusion; (vi) the time and manner for requesting exclusion;
9 and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

10 *See* Fed. R. Civ. P. 23(c)(2)(B); 15 U.S.C. § 78u-4(a)(7). The notices also set out the procedures and
11 deadlines for submitting Claims, objecting to the Settlement (or any aspect thereof), and requesting
12 exclusion from the Settlement Class. In addition, Rule 23(h)(1) requires that “[n]otice of the motion
13 [for attorneys’ fees] must be served on all parties and, for motions by class counsel, directed to class
14 members in a reasonable manner.” Fed. R. Civ. P. 23(h)(1). The notices satisfy this requirement as
15 well: the notices specifically advise Settlement Class Members that Class Counsel will apply to the
16 Court for attorneys’ fees not to exceed 33% of the Settlement Fund and for expenses in an amount
17 not to exceed \$900,000, to be paid from the Settlement Fund and the Fee and Expense Motion will
18 be available on the settlement website. This notice campaign is more than adequate, as it “generally
19 describe[s] the terms of the settlement in sufficient detail to alert those with adverse viewpoints to
20 investigate and to come forward and be heard.” *Young v. LG Chem Ltd.*, 783 F. App’x 727, 736 (9th
21 Cir. 2019) (quoting *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d at 567); *Spann v. J.C. Penney*
22 *Corp.*, 314 F.R.D. 312, 330 (C.D. Cal. 2016) (quoting *Weinberger v. Kendrick*, 698 F.2d 61, 70 (2d
23 Cir. 1982)) (“Settlement notices must ‘fairly apprise the prospective members of the class of the terms
24 of the proposed settlement and of the options that are open to them in connection with the
25 proceedings.’”).

26 In sum, the notices provide sufficient information for Settlement Class Members to make
27 informed decisions regarding the Settlement, fairly apprise them of their rights with respect to the
28 Settlement, is the best notice practicable under the circumstances, and will comply with the Court’s
Preliminary Approval Order, Rule 23, and due process. Class Counsel will provide the Court with

1 information on the notice campaign, including the reaction of the Settlement Class to the Settlement
2 and Plan of Allocation, in their reply submission to be filed with the Court on April 2, 2026.

3 **VI. CONCLUSION**

4 For the reasons set forth herein and in the Graden Declaration, Plaintiffs respectfully request
5 that the Court grant final approval of the Settlement and approve the Plan of Allocation.

6 Dated: December 22, 2025

Respectfully submitted,

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