

Kaiser Race Bias Case – Case Summary

On behalf of themselves, and a class of approximately 2,225 current and former Black employees, Named Plaintiffs Shelby Stewart, Charleta Dabrowski, Benedict Johnson, and Kenya Mayfield, reached an agreement with Defendants Kaiser Foundation Health Plan, Inc., Kaiser Foundation Hospitals, The Permanente Medical Group, Inc., and the Southern California Permanente Medical Group (collectively, “Kaiser Permanente”), in which Kaiser Permanente will pay \$11.5 million to settle a class action race discrimination lawsuit. The settlement covers approximately 2,225 African American employees in two job families (Administrative Support and Consulting Services) at each of the Kaiser Permanente entities.

The Named Plaintiffs filed a complaint on April 22, 2021, alleging that Kaiser Permanente maintains common pay and promotion policies and procedures that cause Black employees in these job families to be underpaid and under-promoted as compared to their similarly-situated non-Black counterparts. Plaintiffs asserted five causes of action under the California Fair Employment and Housing Act, Cal. Gov’t Code section 12940, *et seq.* (“FEHA”), the California Equal Pay Act, as amended, Cal. Labor Code § 1197.5 (AKA the California Fair Pay Act) (“California EPA”), the California Unfair Competition Law, Cal. Bus. & Prof. Code section 17200, *et seq.*, the California Private Attorneys General Act of 2004, Cal. Lab. Code section 2698, *et seq.* (“PAGA”), Title VII of the Civil Rights Act, 42 U.S.C. § 2000e *et seq.* (“Title VII”); 42 U.S.C. § 1981 (“Section 1981”), and related statutes. (Complaint, ¶¶ 63-91.)

This settlement was realized prior to the formal initiation of the lawsuit and without in-court litigation activity. Plaintiffs and Kaiser Permanent (the “Parties”) exchanged information (employee data, policy documents, and interviews of persons most knowledgeable about pay and promotion practices at Kaiser) and then commenced intense negotiations for more than two years with the assistance of a mediator and expert labor statisticians. The result of multiple mediations and further negotiations related to alleged racial inequities produced the settlement agreement the Parties announced today.

Plaintiffs' Counsel began investigating Plaintiffs' potential claims in October 2018. On August 8, 2019, the Parties entered into a tolling agreement, pursuant to which Plaintiffs and Kaiser Permanente agreed not to invoke the statute of limitations or the tolling period as a defense to any proposed action pled by Plaintiffs or to any affirmative defenses. Over the course of more than two years, Plaintiffs conducted an extensive pre-filing investigation and engaged in substantial informal data, document, and witness discovery with Kaiser Permanente. Following extensive negotiations, Plaintiffs obtained multiple rounds of class-wide data and retained an expert, Alex Vekker, Ph.D., to conduct a statistical analysis of pay and promotion disparities across the Class and to determine the scope and scale of potential Class exposure and risk. The class data production included 72 variables that reflected Class Members' compensation and various job attributes, such as: job history, personnel actions, performance review ratings, job families, functions, departments, manager levels, EEO category, and salary grade. Plaintiffs' expert ran multiple sophisticated multivariate regression analyses to isolate the effect of race on base pay and incentive compensation, and to demonstrate potential class-wide exposure. (Kaiser Permanente did not endorse the model used by Plaintiffs' expert, but recognized that Plaintiffs relied on their independent analysis in reaching a resolution.)

Kaiser Permanente provided documents about the challenged policies in this action, including, but not limited to, manuals, guidelines, handbooks, tools, and training materials concerning compensation, job analysis, promotions, career progressions and management development, performance reviews, discrimination complaint processes and investigations, workforce surveys, and personnel action changes. After reviewing these policies, Plaintiffs' Counsel conducted in-depth interviews with four Kaiser Permanente managers regarding the Company's compensation policies, promotion policies, and performance reviews.

Following months of investigation and informal discovery, the Parties participated in a mediation on September 11, 2019 with David Rotman, a highly regarded mediator with more than 25 years of experience handling complex class and collective action negotiations. When the Parties failed to reach agreement during the first mediation, the Parties continued to negotiate and

participated in an additional mediation with Mediator Rotman on December 6, 2019, during which the Parties agreed on preliminary monetary settlement. After agreeing on preliminary monetary terms, the Parties then participated in extensive negotiations regarding programmatic relief in the form of business practices changes that would address pay equity, promotional opportunities, and diversity, equity, and inclusion at Kaiser in the future.

After a delay caused by the COVID-19 pandemic, Kaiser produced additional pay data for 2020 and for the first quarter of 2021, which the Parties analyzed for additional alleged exposure during the expanded class period. Following that analysis, the Parties agreed on an expanded non-reversionary settlement fund of \$11,504,759, the net to be distributed to the Class after fees, expenses, and settlement administration. This non-reversionary fund of \$11,504,759, along with substantial business practice changes, are described fully in the settlement documents, including especially Exhibit B (Business Practice Changes). The complete settlement documents are available at: <https://kaiserracebiascase.com/>.

The settlement is a testament to the courage and perseverance of Plaintiffs willing to come forward to make a difference.