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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

**RAFAEL DAVID SHERMAN,  
Individually and on Behalf of All  
Others Similarly Situated,**

**PLAINTIFF,**

**V.**

**KAISER FOUNDATION HEALTH  
PLAN, INC., A/K/A KAISER  
PERMANENTE,**

**DEFENDANT.**

**Case No.: 13-cv-00981-JAH-JMA**

**CLASS ACTION**

**FINAL JUDGMENT AND ORDER  
OF DISMISSAL WITH  
PREJUDICE**

**Judge: Hon. John A. Houston**

On October 10, 2014, plaintiff Rafael David Sherman (“Mr. Sherman” or “Plaintiff”) and defendant Kaiser Foundation Health Plan, Inc. (“Kaiser” or “Defendant”, herein jointly referred to as the “Parties”) entered into a Class Action Settlement Agreement (the “Agreement”), which is subject to review under Fed. R. Civ. P. 23. Plaintiff filed a Motion for Preliminary Approval of Class Action Settlement and Certification of Settlement Class (the “Preliminary Approval Motion”) in the above-captioned action (the “Lawsuit” or “Action”).

On October 21, 2014, Plaintiff filed the Agreement, along with the

1 Plaintiff's Preliminary Approval Motion. The Preliminary Approval Motion was  
2 unopposed by Kaiser.

3 On December 4, 2014, upon consideration of the Agreement, Preliminary  
4 Approval Motion, and the record, the Court entered an Order of Preliminary  
5 Approval of Class Action Settlement (hereinafter referred to as the "Preliminary  
6 Approval Order").

7 On March 4, 2015, the Plaintiff filed his Motion For Attorneys' Fees, Costs  
8 And Incentive Payment (the "Fee Brief").

9 On March 27, 2015, the Plaintiff filed his Motion for Final Approval of  
10 Class Action Settlement (hereinafter referred to as the "Final Approval Motion").  
11 Pursuant to the Final Approval Motion, Plaintiff requests final certification of the  
12 settlement class under Fed. R. Civ. P. 23(b)(3) and final approval of the proposed  
13 class action Settlement.

14 On April 29, 2015, the Plaintiff filed supplemental briefing in support of the  
15 Final Approval Motion and Fee Brief.

16 On May 11, 2015, a Final Approval Hearing was held pursuant to Fed. R.  
17 Civ. P. 23 to determine whether the Lawsuit satisfies the applicable prerequisites  
18 for class action treatment and whether the proposed settlement is fundamentally  
19 fair, reasonable, adequate, and in the best interests of the Class Members and  
20 should be approved by the Court.

21 The Court has read and considered the Agreement, Final Approval Motion  
22 and the record. All capitalized terms used herein have the meanings defined herein  
23 and/or in the Agreement.

24 NOW, THEREFORE, IT IS HEREBY ORDERED:

25 I. JURISDICTION: The Court has jurisdiction over the subject matter of the  
26 Lawsuit and over all settling parties hereto.

27 II. SETTLEMENT CLASS MEMBERS: Pursuant to Fed. R. Civ. P. 23(b)(3),  
28 the Lawsuit is hereby finally certified, for settlement purposes only, as a

1 class action on behalf of the following Class Members:

2 All former Kaiser members within the United States who  
3 received one or more calls made with an automatic  
4 telephone dialing system or an artificial or pre-recorded  
5 voice on their cellular telephones from Kaiser or its  
6 agents and/or employees encouraging them to re-apply  
7 for Kaiser coverage or to return at the next opportunity  
8 from April 24, 2009 through December 4, 2014.

9 **III. CLASS REPRESENTATIVE AND CLASS COUNSEL APPOINTMENT:**

10 Pursuant to Fed. R. Civ. P. 23, Plaintiff Rafael David Sherman is the Class  
11 Representative, and Joshua B. Swigart of Hyde & Swigart and Abbas  
12 Kazerounian of the Kazerouni Law Group, APC are appointed “Class  
13 Counsel.”

14 **IV. NOTICE AND CLAIMS PROCESS:** Pursuant to the Court’s Preliminary

15 Approval Order, the Claims Administrator, KCC, has complied with the  
16 approved notice process as confirmed in its declaration filed with the Court.  
17 The form and method for notifying the Class Members of the settlement and  
18 its terms and conditions was in conformity with this Court’s Preliminary  
19 Approval Order and satisfied the requirements of Fed. R. Civ. P. 23(c)(2)(B)  
20 and due process, and constituted the best notice practicable under the  
21 circumstances. The Court finds that the notice process was designed to  
22 advise the Class Members of their rights. Further, the Court finds that  
23 Settlement Fund is approved, and the claim process set forth in the  
24 Agreement was followed and that the process was the best practicable  
25 procedure under the circumstances.

26 **V. FINAL CLASS CERTIFICATION:** The Court finds that the Lawsuit satisfies

27 the applicable prerequisites for class action treatment under Fed. R. Civ. P.  
28 23, for settlement purposes under Fed. R. Civ. P. 23(b)(3). The Court finds  
that the settlement of the Lawsuit, on the terms and conditions set forth in the

1 Agreement, is in all respects fundamentally fair, reasonable, adequate, and in  
2 the best interests of the Class Members, especially in light of the benefits to  
3 the Class Members, the strength of the Plaintiff's case, the complexity,  
4 expense and probable duration of further litigation, the risk and delay  
5 inherent in possible appeals, an alleged arbitration agreement, and the risk of  
6 collecting any judgment obtained on behalf of the class.

7 VI. SETTLEMENT TERMS: The Agreement, which has been filed with the  
8 Court and shall be deemed incorporated herein, and the proposed settlement  
9 are finally approved and shall be consummated in accordance with the terms  
10 and provisions thereof, except as amended by any order issued by this Court.  
11 The material terms of the Agreement include, but are not limited to, the  
12 following:

13 1. The Claims Administrator, KCC, shall pay each of the 79,311  
14 claims by Class Members (representing 78,459 timely and valid claims and  
15 852 late claims) who did not exclude themselves from the settlement their  
16 pro rata share of the Net Settlement Fund<sup>1</sup> in the form of a check;

17 2. The Claims Administrator shall pay from the Common Fund  
18 the total sum of \$1,500 to the Plaintiff Rafael David Sherman, sent via Class  
19 Counsel, as an incentive payment for bringing and participating in this  
20 Lawsuit;

21 3. The Claims Administrator shall be paid from the Common  
22 Fund the sum of \$839,070.18 for its costs and fees incurred for the cost of  
23 notice and claims administration and any amounts advanced by Defendant  
24 for those purposes shall be credited and refunded to it from the Common  
25 Fund; and

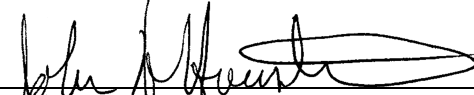
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27 <sup>1</sup> The Net Settlement Fund is determined by subtracting from the \$5,350,000  
28 Common Fund the amount of awarded attorneys' fees and litigation costs, claims  
administration costs, and an incentive award to the named Plaintiff.



1 XI. Without affecting the finality of this Final Judgment and Order of Dismissal  
2 with Prejudice, the Court hereby retains continuing and exclusive  
3 jurisdiction over the Parties and all matters relating to the Action and/or  
4 Agreement, including the administration, interpretation, construction,  
5 effectuation, enforcement, and consummation of the settlement and this  
6 order.

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8 IT IS SO ORDERED.

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10 Dated: May 12, 2015

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12 THE HON. JOHN A. HOUSTON  
13 U.S. DISTRICT COURT JUDGE  
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