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12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**

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15  
16 ROBERT SHAW, et al., individually and on  
behalf of all others similarly situated, and as a  
17 proxy of the State of California on behalf of  
aggrieved employees

18 Plaintiffs,

19 vs.

20  
21 AMN SERVICES, LLC, KAISER  
FOUNDATION HOSPITALS, SOUTHERN  
22 CALIFORNIA PERMANENTE MEDICAL  
GROUP, INC., and THE PERMANENTE  
23 MEDICAL GROUP, INC

24 Defendants.

Case No. 3:16-cv-02816 JCS

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL**

Date: December 21, 2018

Time: 9:30 a.m.

Courtroom: G, 15<sup>th</sup> Floor

Judge: Hon. Joseph C. Spero

1 Plaintiffs’ Motion for Preliminary Approval of Settlement of Class Action (the “Motion”)  
2 came before the Court for hearing on December 21, 2018. The Court has considered the terms  
3 set forth in the Joint Stipulation of Class Action Settlement Agreement and Release (the  
4 “Settlement Agreement”), the proposed Notice of Class Action Settlement attached to the  
5 Settlement Agreement, the Declaration of Joshua G. Konecky, filed in support thereof, the  
6 Declaration and Amended Declaration of Mark Rapazzini of Heffler Claims Group, the proposed  
7 Settlement Administrator, the Declarations of Plaintiffs Robert Shaw, Candy Kucharski, and  
8 Jennifer Corona Teitelbaum, and the papers and pleadings on file in this action.

9 Having reviewed and considered the terms and conditions of the proposed Settlement as  
10 set forth in the Settlement Agreement, which are hereby incorporated in this Order; and no  
11 opposition to the Motion having been submitted; and the Court having jurisdiction to consider the  
12 Motion and the relief requested therein, and venue being proper before the Court; and due and  
13 proper notice of the Motion having been provided; and upon the hearing on the Motion and after  
14 due deliberation, and good and sufficient cause appearing therefor;

15 **IT IS HEREBY ORDERED:**

16 1. The Settlement Agreement is hereby preliminarily approved, subject to further  
17 consideration at the Fairness Hearing provided for below. The Court concludes that the  
18 Settlement is sufficiently within the range of reasonableness to warrant the preliminary approval  
19 of the Settlement, certification of the Settlement Class, the scheduling of the Fairness Hearing,  
20 and the mailing of notices to Class Members, each as provided for in this Order.

21 **Certification of the Settlement Class**

22 2. The Court observes that it previously certified a class action in this case by Order  
23 filed July 5, 2018 [ECF 136]. The previously certified class was defined as:

24 All traveling nurses who worked in the job position(s) of Registered Nurse,  
25 Licensed Practical Nurse, or another nursing position(s), for Defendant AMN  
26 and/or Defendant Kaiser, in one or more Kaiser facilities in California between  
27 September 11, 2013 and the date of class notice.

1           3.       The Court finds, for purposes of settlement, that the requirements of Rule 23(a) of  
2 the Federal Rules of Civil Procedure appear to be satisfied for the Class: (1) the Class is  
3 sufficiently numerous that joinder of all members is impracticable; (2) there are questions of law  
4 or fact common to the Class; (3) the claims or defenses of Plaintiffs are typical of the claims or  
5 defenses of the Class Members; and (4) Plaintiffs will fairly and adequately protect the interests  
6 of the Class Members.

7           **Fed. R. Civ. P. 23(a):**

8           Numerosity: Plaintiffs meet the criteria of Rule 23(a)(1) of the Federal Rules of Civil  
9 Procedure because there are approximately 8,212 class members, making joinder impractical.  
10 Additionally, these class members are ascertainable through Defendants' records.

11           Common Questions: Plaintiffs meet the criteria of Rule 23(a)(2) because the Class claims  
12 of the traveling nurses turn upon answers to overarching common questions regarding  
13 Defendants' policies and procedures that are capable of classwide resolution for settlement  
14 purposes. The Court finds that for settlement purposes, the common questions raised by the  
15 traveling nurses include: whether Defendants' alleged policy of conveying to traveling nurses that  
16 Kaiser does not permit overtime and/or has a "strict" policy on overtime has led to underpayment  
17 of overtime; whether Defendants' common overtime approval process is burdensome and  
18 therefore has led to underpayment of overtime; whether Defendants' "patient first" policy and  
19 alleged lack of a policy as to the provision of uninterrupted meal and rest breaks has led to the  
20 denial of meal and rest breaks that are truly off-duty and otherwise compliant; and whether  
21 Defendants' meal period waiver policy is unlawful, among others.

22           Typicality: Plaintiffs meet the criteria of Rule 23(a)(3) for settlement purposes because  
23 the claims of the Class Representatives are typical of the claims of the Class in that all their claims  
24 are based on the same AMN and Kaiser policies and legal theories, and Plaintiffs were subject to  
25 and allege they were harmed by the same AMN and Kaiser policies as other traveling nurse Class  
26 Members.  
27

1        Adequacy: Plaintiffs meet the criteria of Rule 23(a)(4) because the named Plaintiffs are  
2 adequate class representatives in that they do not have any conflicts with the class, are committed  
3 to representing the interests of the members of the class, and are represented by counsel with  
4 extensive experience and expertise in class action litigation, including wage-and-hour class  
5 actions.

6        **Fed. R. Civ. P. 23(b)**:

7        The Court preliminarily finds, for purposes of settlement only, that the requirements of  
8 Rule 23(b)(3) of the Federal Rules of Civil Procedure are met because there are common questions  
9 of fact and law regarding Defendants’ policies and procedures, including those identified above,  
10 that in the context of a settlement, predominate over any individual issues. Moreover, a class  
11 action settlement is superior to other available methods for the fair and efficient adjudication of  
12 the controversy because the injury suffered by each member of the Class, while meaningful on an  
13 individual basis, is not of such magnitude as to make the prosecution of individual actions against  
14 Defendants economically feasible, and the class action settlement device provides the benefits of  
15 single adjudication, economies of scale, and comprehensive supervision by a single court.

16        4. For purposes of settlement, the Class is certified pursuant to Rules 23(a) and  
17 23(b)(3) of the Federal Rules of Civil Procedure as a class action on behalf of the Class, defined  
18 as follows:

19            All traveling nurses who worked in the job position(s) of Registered Nurse,  
20 Licensed Practical Nurse, or another nursing position(s), for Defendant AMN  
21 and/or Defendant Kaiser, in one or more Kaiser facilities in California between  
22 September 11, 2013 and the date the Court enters an order preliminarily approving  
23 the settlement.

24        5. For the purpose of facilitating the settlement, the Court designates Plaintiffs Robert  
25 Shaw, Candy Kucharski and Jennifer Corona Teitelbaum as the Class Representatives. Also for  
26 the purpose of facilitating the settlement, the Court designates Joshua G. Konecky and Nathan B.  
27 Piller of Schneider Wallace Cottrell Konecky Wotkyns LLP as Class Counsel.

3. The Court appoints Heffler Claims Group as the Settlement Administrator.

1           4.       The Court approves the revised Settlement Notice, attached as Exhibit A to the  
2 parties' Joint Submission of December 21, 2018 [Dkt 156].

3           **Form and Timing of Notice**

4           10.       Not later than January 11, 2019, Defendants shall provide an updated class list to  
5 the Settlement Administrator.

6           11.       Not later than thirty (30) calendar days after provision of the updated class list to  
7 the Settlement Administrator, the Settlement Administrator shall mail the Settlement Notice,  
8 substantially in the form of Exhibit A to the Joint Submission [Dkt 156], to be mailed by first-  
9 class mail, postage pre-paid, to all Class Members through the notice procedures described in the  
10 Settlement Agreement. In addition, the Settlement Administrator shall e-mail the Settlement  
11 Notice, substantially in the form of Exhibit A to the Joint Submission [Dkt 156], to all Class  
12 Members for whom a valid e-mail address is available in Defendants records, through the notice  
13 procedures described in the Settlement Agreement.

14           12.       At least fourteen (14) calendar days prior to the Fairness Hearing, Class Counsel  
15 shall serve and file a sworn statement from the Settlement Administrator attesting to compliance  
16 with the service of the Settlement Notices, as set forth above. The cost of giving notice to the  
17 Class Members as specified in this Order shall be paid as set forth in the Settlement Agreement.

18           13.       The Court finds that the notice to be provided as set forth in this Order is the best  
19 means of providing notice to the Class Members, is practicable under the circumstances and,  
20 when completed, shall constitute due and sufficient notice of the Settlement and the Fairness  
21 Hearing to all persons affected by and/or entitled to participate in the Settlement or the Fairness  
22 Hearing, in full compliance with the requirements of due process and the Federal Rules of Civil  
23 Procedure.

24           **Ability of Class Members to Opt Out of the Settlement Class, Object to the**  
25 **Settlement, and/or Dispute Their Individual Payment**

26           14.       Pursuant to ¶ 35 of the Settlement Agreement, all Class Members who wish to  
27 exclude themselves from the Settlement Class must follow the procedures set forth in the Class

1 Notice. Class Members shall have forty-five (45) days from the date the notice is mailed to send  
2 any requests for exclusion to the Settlement Administrator. A Request for Exclusion must be  
3 postmarked by this 45-day deadline and comply with the other instructions set forth in the Class  
4 Notice to be valid. At least fourteen (14) calendar days prior to the Fairness Hearing, Class  
5 Counsel shall file a sworn statement by the Settlement Administrator setting forth the names and  
6 addresses of each member of the Class Member who elected to exclude themselves from the  
7 Settlement.

8 15. Any Class Member who does not properly and timely exclude themselves from  
9 the Settlement shall be included in the Class and, if the Settlement is approved and becomes  
10 effective, shall be bound by all the terms and provisions of the Settlement Agreement, including  
11 but not limited to the Release of Claims described therein, whether or not such person shall have  
12 objected to the Settlement and whether or not such person makes a claim upon, or participates in,  
13 the settlement fund or the other benefits to the Class to be provided under the Settlement  
14 Agreement.

15 16. Pursuant to ¶ 37 of the Settlement Agreement, all Class Members who wish to  
16 object to the Settlement must follow the procedures set forth in the Class Notice. Class Members  
17 shall have forty-five (45) days from the date the notice is mailed to file any objections with the  
18 Court. An objection must be timely and comply with the instructions set forth in the Class Notice  
19 to be valid.

20 17. Pursuant to ¶ 34 of the Settlement Agreement, all Class Members who wish to  
21 dispute their individual payments (*i.e.* the number of weeks during which they worked for AMN  
22 and Kaiser in a Kaiser facility in California, between September 11, 2013 and the date of  
23 preliminary approval) must follow the procedures set forth in the Class Notice.

#### 24 **Fairness Hearing**

25 18. A hearing (the “Fairness Hearing”) shall take place before this Court, on the date  
26 and time set forth below, to determine:

1 a. Whether the Court should permanently certify the Class for settlement  
2 purposes and whether the Plaintiffs and Class Counsel have adequately represented the class;

3 b. Whether the Settlement, on the terms and conditions provided for in the  
4 Settlement Agreement, should be finally approved by the Court as fair, reasonable and adequate;

5 c. Whether the Court should enter Judgment consistent with the terms of the  
6 final approval order;

7 d. Whether the application for attorneys' fees and expenses to be submitted  
8 by Class Counsel should be approved;

9 e. Whether the motion for service awards to the class representatives should  
10 be approved; and

11 e. Such other matters as the Court may deem necessary or appropriate. The  
12 Court may finally approve the Settlement at or after the Fairness Hearing with any modifications  
13 agreed to by the Parties and without further notice to the Class Members.

14 19. Class Counsel shall serve and file their application for attorneys' fees and costs  
15 and their application for the payment of Service Payments to the Class Representatives by not  
16 later than seven (7) calendar days after the Class Notice is mailed.

17 20. Any Class Member who has not requested to be excluded from the Settlement, and  
18 any other interested person, may appear at the Fairness Hearing in person or by counsel and be  
19 heard, to the extent allowed by the Court, either in support of or in opposition to the matters to be  
20 considered at the Fairness Hearing. Any documents filed with the Court must also be served on  
21 the counsel listed above by the deadline for submitting objections, either by hand delivery or by  
22 first-class mail.

23 21. Any responses to any written objections to the Settlement and any other matter in  
24 support of the Settlement shall be filed with the Court not later than April 4, 2019 ~~calendar days after~~  
25 ~~entry of this Order.~~

1           22.     The Court may adjourn the Fairness Hearing, including the consideration of the  
2 application for attorneys' fees and expenses, without further notice of any kind other than an  
3 announcement of such adjournment in open court at the Fairness Hearing.

4           The Court HEREBY GRANTS preliminary approval of the class action settlement as set  
5 forth above and sets the following schedule:


6 7 8	Deadline for Defendants to provide updated class list to Settlement Administrator	21 calendar days after entry of Preliminary Approval January 18, 2019 ( <del>January 11, 2019</del> )
9 10 11	Deadline for Settlement Administrator to mail Notice of Settlement	30 calendar days after provision of class list to Settlement Administrator (51 days after entry of Preliminary Approval) February 18, 2019 ( <del>February 11, 2019</del> )
12 13 14	Deadline for Plaintiffs to file brief in support of motion for attorneys' fees and costs	7 calendar days after class notice is mailed (58 days after entry of Preliminary Approval) February 25, 2019 ( <del>February 18, 2019</del> )
15 16 17	Last day for Class Members to file any requests for exclusions, objections or disputed claim amounts	45 calendar days from date notice is mailed (96 days after entry of Preliminary Approval) April 4, 2019 ( <del>March 28, 2019</del> )
18 19 20	Settlement Administrator to provide update to class counsel regarding requests for exclusion or disputed amounts	59 calendar days from date notice mailed (111 days after entry of Preliminary Approval) April 18, 2019 ( <del>April 11, 2019</del> )
21 22 23	Deadline for the parties' replies to any class member objections:	May 3, 2019 [ <del>TO BE SET BY COURT</del> ]
24 25 26	Deadline for Plaintiffs to file motion for final approval of class action settlement	May 3, 2019 [ <del>TO BE SET BY COURT</del> ]



1 2 3 4 5	Deadline for Plaintiffs to file motion for service awards	February 25, 2019 <del>[TO BE SET BY COURT]</del>
6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27	Final Fairness Hearing and hearing on Plaintiff's motion for fees, costs and service awards	May 31, 2019 at 9:30 AM, Courtroom G <del>[TO BE SET BY COURT]</del> 15th Floor, San Francisco, CA

IT IS SO ORDERED.

DATED December 27, 2018

  
\_\_\_\_\_  
The Honorable Joseph C. Spero  
United States Magistrate Judge

**CERTIFICATE OF SERVICE**

1  
2 I hereby certify that on December 21, 2018, I electronically filed the foregoing document  
3 with the Clerk of the Court using the Court's CM/ECF system, which will send a notice of  
4 electronic filing to all CM/ECF participants.  
5

6 */s/ Joshua G. Konecky*  
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