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

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

18 Plaintiffs,

19 vs.

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

23 Defendants.

Case No. 3:16-cv-02816 JCS

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

Date: May 31, 2019

Time: 9:30 a.m.

Courtroom: G, 15th Floor

Judge: Hon. Joseph C. Spero

1 Upon consideration of Plaintiffs’ Motion for Final Approval of Class Action Settlement
2 (the “Motion”) filed by Plaintiffs Robert Shaw, Candy Kucharski, and Jennifer Corona
3 Teitelbaum, in the above-captioned case seeking final Court approval of the parties’ Settlement
4 of this action on the terms set forth in the Joint Stipulation of Class Action Settlement Agreement
5 and Release (the “Settlement Agreement”), and having reviewed and considered the terms and
6 conditions of the proposed Settlement as set forth in the Settlement Agreement, a copy of which
7 has been submitted with the Motion for Preliminary Approval [ECF 151-2] and the terms of which
8 are incorporated in this Order; and no opposition to the Motion having been submitted; and the
9 Court having jurisdiction to consider the Motion and the relief requested therein, and venue being
10 proper before the Court; and due and proper notice of the Motion having been provided; and upon
11 the hearing on the Motion and after due deliberation, and good and sufficient cause appearing
12 therefor;

13 **THE COURT MAKES THE FOLLOWING FINDINGS AND ORDERS:**

14 1. The parties litigated this case for more than two-and-a-half years before reaching
15 the proposed class action settlement currently before the Court. During the course of the
16 litigation, the Court became very familiar with the claims, defenses, competing facts and legal
17 theories presented by the parties, as well as the work of counsel in presenting them. The
18 Settlement was reached after significant investigation, discovery, and motion practice, including
19 Plaintiffs’ successful motion for class certification. The motion practice evidenced that the parties
20 conducted substantial discovery, depositions, and investigation to support and vet their positions
21 during the course of the case. The negotiations were at arms-length, and facilitated by Jeffrey A.
22 Ross, a mediator who specializes exclusively in the mediation of employment matters, over the
23 course of a 12-hour mediation session.

24 2. With this history, the Court has now considered Plaintiffs’ motion for final
25 approval of the proposed class action settlement by weighing the strength of the case; the risk,
26 expense, complexity, and likely duration of further litigation; the risk of maintaining class action
27 status throughout the trial; and the extent of discovery completed, among other factors. *See Torrisi*

1 *v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375-1376 (9th Cir. 1993); *Class Plaintiffs v. City of*
2 *Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992)). The Court concludes based on these factors, as
3 well as the terms of the settlement itself and the history of the lengthy arms-length negotiations
4 that resulted in an agreement of these terms, that the settlement is “fair, adequate, and reasonable.”
5 *See Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003).

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

7 3. The Court also finds that the requirements of Rule 23(a) of the Federal Rules of
8 Civil Procedure are satisfied for the Settlement Class: (1) the Class is sufficiently numerous that
9 joinder of all members is impracticable; (2) there are questions of law or fact common to the
10 Class; (3) the claims or defenses of Plaintiffs are typical of the claims or defenses of the Class
11 Members; and (4) Plaintiffs will fairly and adequately protect the interests of the Class Members.

12 Numerosity: Plaintiffs meet the criteria of Rule 23(a)(1) of the Federal Rules of Civil
13 Procedure because there are over 8,000 class members, making joinder impractical. Additionally,
14 these class members are ascertainable through Defendants’ records.

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

26 Typicality: Plaintiffs meet the criteria of Rule 23(a)(3) for settlement purposes because
27 the claims of the Class Representatives are typical of the claims of the Class in that all their claims

1 are based on the same AMN and Kaiser policies and legal theories, and Plaintiffs were subject to
2 and allege they were harmed by the same AMN and Kaiser policies as other traveling nurse Class
3 Members.

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

9 **Fed. R. Civ. P. 23(b)**:

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

19 5. In light of the foregoing, the Settlement Class is certified pursuant to Rules 23(a)
20 and 23(b)(3) of the Federal Rules of Civil Procedure as a class action on behalf of the Class,
21 defined as follows:

22 All traveling nurses who worked in the job position(s) of Registered Nurse,
23 Licensed Practical Nurse, or another nursing position(s), for Defendant AMN
24 and/or Defendant Kaiser, in one or more Kaiser facilities in California between
September 11, 2013 and December 27, 2018.

25 6. For the purpose of facilitating the settlement, the Court designates Plaintiffs Robert
26 Shaw, Candy Kucharski and Jennifer Corona Teitelbaum as the Class Representatives. Also for
27

1 the purpose of facilitating the Settlement, the Court designates Joshua G. Konecky and Nathan B.
2 Pillier of Schneider Wallace Cottrell Konecky Wotkyns LLP as Class Counsel.

3 7. The Court finds that due and proper notice of the Settlement was provided to all
4 Class Members, including notice of the right to object to the proposed Settlement, the right to
5 object to Class Counsel's application for attorneys' fees and costs, the right to appear in person
6 or by counsel at the Fairness Hearing and be heard, and the right to Opt Out. The Court finds that
7 the notice provided was the best means of providing notice to the Class Members under the
8 circumstances. The Court further finds that it was due and sufficient notice of the Settlement and
9 the Fairness Hearing to all persons affected by and/or entitled to participate in the Settlement or
10 the Fairness Hearing, in full compliance with the requirements of due process and Federal Rule
11 of Civil Procedure 23(c)(2)(B), (e)(1), and (h)(1)

12 8. The Court finds that no class member has objected to the Settlement, the motion
13 for service awards, or the motion for attorneys' fees and costs.

14 9. The Court finds that four (4) individuals have requested to opt out of the
15 Settlement. These individuals are Yu Hui Lu, Tonia Branch, Maria Perla Logronio and Rachel
16 Below. These individuals also are listed on Exhibit E to the Declaration of Mark Rapazzini of
17 Heffler Claims Group, the Settlement Administrator in this case. They will not be bound by the
18 orders or the judgment in this case.

19 10. By separate order, the Court grants Plaintiffs' motion for service awards and
20 Plaintiffs motion for reasonable attorneys' fees and costs.

21 11. The Court approves payment to the Settlement Administrator, Heffler Claims
22 Group, of \$73,065 out of the Gross Settlement Amount.

23 12. The Court finds that the terms of the Settlement Agreement are fair, reasonable,
24 and adequate and are hereby approved on a final basis pursuant to Federal Rule of Civil Procedure
25 23(e). Specifically, the Court approves in full the Settlement Agreement attached as Exhibit 1 to
26 the Declaration of Joshua Konecky in Support of the Motion for Preliminary Approval [Docket
27

1 No. 151-1]. The Parties shall comply with and implement the Settlement Agreement according to
2 its terms.

3 13. The Court retains jurisdiction with respect to all matters arising from or related to
4 the implementation of the Settlement Agreement or this Order.

5 14. The Court will separately enter a Judgment for the Class Action claims consistent
6 with the terms of this Order.

7 15. Finally, the Court's previous Order granting the Motion for Class Certification
8 [ECF 136] had severed the claims of Plaintiff Sharon Davis and stayed them until resolution of
9 the class claims, because she falls outside of the class definition. *Id.* at 15:27-28. The Court sets
10 a status conference for August 9, 2019, at 2:00 ~~a.m.~~/p.m. to set a schedule
11 and otherwise address the resolution of Ms. Davis' claims.

12
13 IT IS SO ORDERED.

14
15 DATED May 31, 2019



16 The Honorable Joseph C. Spero
17 Chief Magistrate Judge
18 United States District Court
19 Northern District of California