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13 Attorneys for Plaintiff
14 CHARLES DION, on behalf of himself
15 and all others similarly situated

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

CHARLES DION, on behalf of himself and
all others similarly situated,

Plaintiffs,

v.

KAISER FOUNDATION HEALTH PLAN,
INC.; and DOES 1 through 20, Inclusive

Defendants.

) CASE NO.: RG14718903
) Assigned to Hon. Winifred Y. Smith, D 21
)
) **NOTICE OF ENTRY OF FINAL ORDER**
) **APPROVING CLASS ACTION**
) **SETTLEMENT AND JUDGMENT**

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on January 17, 2020, the Court entered the Final Order
3 Approving Class Action Settlement and Judgment. A true copy of the Final Order is attached
4 hereto as Exhibit 1.

5 DATED: January 21, 2020

6 GIANELLI & MORRIS
7 LAW OFFICES OF SCOTT C. GLOVSKY, APC

8
9 By: 

10 ROBERT S. GIANELLI
11 JOSHUA S. DAVIS
12 ADRIAN J. BARRIO
13 Attorneys for Plaintiff,
14 Charles Dion
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EXHIBIT 1



22805000

FILED
ALAMEDA COUNTY

JAN 17 2020

CLERK OF THE SUPERIOR COURT

By A. Simpson Deputy

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Attorneys for Plaintiff
CHARLES DION, on behalf of himself
and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

CHARLES DION, on behalf of himself and
all others similarly situated,

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KAISER FOUNDATION HEALTH PLAN,
INC.; and DOES 1 through 20, Inclusive,

Defendants.

CASE NO.: RG14718903

Assigned to Hon. Winifred Y. Smith, D 21

**[PROPOSED] FINAL ORDER
APPROVING CLASS ACTION
SETTLEMENT AND JUDGMENT**

1 The motion of Plaintiff Charles Dion, on behalf of himself and all others similarly
2 situated, for final approval of the class action Settlement reached with Defendant Kaiser
3 Foundation Health Plan, Inc. ("KFHP") (collectively, the "Parties") in this lawsuit was heard on
4 January 17, 2020. After considering the Settlement, the moving papers, arguments of counsel, and
5 all other matters presented to the Court, the Court ORDERS, ADJUDICATES, AND DECREES
6 as follows:

7 1. The Motion for Final Approval is GRANTED. The Court approves the proposed
8 Settlement.

9 2. The Class is approved for settlement purposes only.

10 3. This Final Order Approving Class Action Settlement and Judgment ("Final Order
11 and Judgment") incorporates by reference: (a) the Parties' Agreement filed on September 25,
12 2019, including Exhibits 1-6 filed on August 13, 2019 (collectively the "Agreement"); and (b) the
13 Court's findings and conclusions contained in its Order Granting Preliminary Approval of Class
14 Settlement (the "Preliminary Approval Order"). All defined terms in this Final Order and
15 Judgment have the same meanings as in the Agreement.

16 4. All preliminary findings and conclusions in the Court's Preliminary Approval
17 Order are final.

18 5. The Court has personal jurisdiction over all members of the Class. The Court has
19 subject matter jurisdiction over the claims asserted in this Litigation to approve the Settlement, the
20 Agreement, and all attached exhibits. The Agreement and Settlement are fair, reasonable and
21 adequate, and consistent and in compliance with the applicable provisions of the Code of Civil
22 Procedure and the Rules of Court, as to, and in the best interests of, the Class. The Court also finds
23 that the Settlement resulted from an arms-length mediation process and was concluded only after
24 Plaintiff and KFHP conducted their own investigations and evaluations of the factual and legal
25 issues raised by Plaintiff's claims, as well as KFHP's defenses. No objections have been made to
26 the Settlement by any member of the Class. Accordingly, the Agreement and the Settlement are
27 finally approved.
28

1 6. The Court directs the Parties and their counsel to implement and consummate the
2 Agreement according to its terms and provisions.

3 7. Pursuant to the Court's Preliminary Approval Order, the notice requirement was
4 satisfied in that:

5 (a) KFHP included language regarding the Settlement, and the link to learn
6 more information about the Settlement, in its "local service area" emails for California service
7 areas, in the form and manner as required by the Preliminary Approval Order, which was sent to
8 approximately 3,561,314 Kaiser Members in California as follows: 1,673,620 Kaiser members in
9 Southern California on November 7, 2019 and 1,887,694 members in Northern California on
10 November 11, 2019.

11 (b) KFHP posted language regarding the Settlement on its kp.org webpages
12 for Northern California and Southern California under "Important Notices" commencing on
13 October 10, 2019 through December 31, 2019, the last date for Class Members to object to the
14 Settlement, in the form and manner required by the Preliminary Approval Order.

15 (c) These procedures afforded protections to persons in the Class and provide
16 the basis for the Court to make an informed decision on approval of the Settlement based on the
17 responses of Class Members.

18 8. The Notice and all other instruments provided to the Class Members:

19 (a) constituted the best practicable notice under the circumstances;

20 (b) constituted notice that was reasonably calculated to apprise Class
21 Members of the pendency of the Litigation, and of their right to object to the proposed Settlement
22 and to appear at the Final Approval Hearing;

23 (c) was reasonable and constituted due, adequate, and sufficient notice to all
24 persons entitled to receive notice; and

25 (d) met all applicable requirements of the Code of Civil Procedure and the
26 Rules of Court.

27 9. The Class Counsel and the Class Representative adequately represented the Class
28 for purposes of entering into and implementing the Settlement.

1 10. Class Counsel are awarded attorneys' fees in the amount of \$1,673,869.44 and
2 costs in the amount of \$176,130.56. These amounts cover any and all claims for attorneys' fees,
3 expenses, and costs incurred by any and all Class Counsel in connection with the Settlement of the
4 Litigation and the administration of the Settlement. This payment must be provided by KFHP to
5 Class Counsel in accordance with Paragraph 20 of the Agreement.

6 11. Ten percent (10%) of the attorneys' fee award (\$167,386.94) shall be kept in the
7 client trust account of Gianelli & Morris, ALC, until 90 days after the date of judgment. Plaintiff
8 and KFHP shall provide a report or statement regarding KFHP's compliance with the injunctive
9 and declaratory relief. If Class Counsel demonstrates that the Settlement is providing the
10 anticipated benefits, then the Court will at that time release the hold-back of attorneys' fees.

11 12. As incentive award for participation as the Class Representatives in the
12 Litigation, the Court awards \$17,500.00 to Plaintiff Charles Dion and \$17,500.00 to Gina Rieger.
13 KFHP must pay the incentive award in accordance with Paragraph 20 of the Agreement.

14 13. The release of claims set forth in the Agreement in Paragraphs 15-17 is
15 incorporated by reference and effective as of the date of this Final Order and Judgment, and
16 forever discharges the Released Parties from any claims or liabilities arising from or related to the
17 Released Claims.

18 14. Without affecting the finality of this Final Order and Judgment for purposes of
19 appeal, the Court retains jurisdiction as to all matters relating to administration, consummation,
20 enforcement, and interpretation of the Agreement and this Order, and for any other necessary
21 purpose; *provided, however*, that nothing in this paragraph restricts the ability of the Parties to
22 exercise their rights under Paragraph 16 of this Final Order and Judgment. The Parties submit to
23 the jurisdiction of the Court for purposes of administration, construction, consummation,
24 enforcement, and interpretation of the Agreement and the Settlement.

25 15. The Agreement is binding on, and has *res judicata* and preclusive effect in, all
26 pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff and any
27 other Class Members, as well as their Related Parties, that allege Released Claims, as defined in
28 the Agreement.

1 16. Neither this Final Order and Judgment, nor the Agreement, nor any other
2 documents they reference or attach, nor any action taken to carry out this Final Order and
3 Judgment or the Agreement, is, may be construed as, or may be used as an admission or
4 concession by or against KFHP of the validity of any claim or any actual or potential fault,
5 wrongdoing, or liability whatsoever. Entering into or carrying out the Agreement, and any
6 negotiations or proceedings relating to it, may not in any event be construed as, or deemed
7 evidence of, an admission or concession as to Plaintiff's claims or KFHP's denials or defenses,
8 and may not be offered or received in evidence in any action or proceeding against any party in
9 any court, administrative agency, or other tribunal for any purpose whatsoever, except as evidence
10 of the Settlement or to enforce the provisions of this Final Order and Judgment or the Agreement;
11 provided, however, that this Final Order and Judgment and the Agreement may be offered in any
12 action against or by KFHP or the Class Members to support a defense of *res judicata*, collateral
13 estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or
14 any other theory of claim preclusion, issue preclusion, or similar defense or counterclaim to the
15 extent allowed by law.

16 17. The Parties are authorized, without further approval from the Court, to agree to
17 and adopt non-substantive amendments, modifications, or expansions of the Agreement that are
18 consistent with this Final Order and Judgment, and do not limit the rights of Class Members under
19 the Agreement. Any substantive amendments, modifications, or expansions of the Agreement
20 require prior approval by the Court.

21 18. Any work product retained by Plaintiff or Class Counsel that is based on or
22 incorporates information designated as Confidential or Highly Confidential under the terms of the
23 Protective Order previously entered in this case and provided by the Parties to each other is
24 deemed Confidential or Highly Confidential information under the terms of the Protective Order,
25 and the disclosure or use of those materials is subject to the same restrictions as Confidential and
26 Highly Confidential information under the terms of the Protective Order previously entered in this
27 case.
28

1 19. Each and every Class Member and their Related Parties are forever barred and
2 enjoined from commencing, instituting, or continuing to prosecute any action or proceeding in any
3 court of law or equity, arbitration tribunal, administrative forum, or other forum of any kind,
4 asserting any of the Released Claims against any of the Released Parties, except for claims to
5 enforce the Settlement.

6 20. There being no just reason for delay, the Court, in the interests of justice, directs
7 the Clerk of the Court to enter this Final Order and Judgment, and decrees that, upon entry, it be
8 deemed a final judgment.

9
10 **IT IS SO ORDERED.**

11 Dated: *January*¹⁶, 2020

12 By: *Winifred Y. Amick*
13 Judge of the Superior Court
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Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

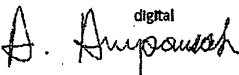
Case Number: RG14718903
Order After Hearing Re: of 01/17/2020

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 01/17/2020.

Chad Finke Executive Officer / Clerk of the Superior Court

By  ^{digital}

Deputy Clerk

PROOF OF SERVICE

Charles Dion v. Kaiser Foundation Health Plan, Inc. / RG14718903

**STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 550 South Hope Street, Suite 1645, Los Angeles, CA 90071.

On January 21, 2020, I served the foregoing document described as **NOTICE OF ENTRY OF FINAL ORDER APPROVING CLASS ACTION SETTLEMENT AND JUDGMENT** on the interested parties in this action by placing a true copy of the original thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED

☒ **(By Mail)** As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ **(By Courtesy Email)** I served the above-entitled document(s) by email and .pdf attachment through the office email service for Gianelli & Morris.

☒ **(State)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 21, 2020 at Los Angeles, California.



Leticia Shaw

SERVICE LIST

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