

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MONICA SMITH and ERIKA SIERRA,
individually and on behalf of all others
similarly situated individuals,

Plaintiffs,

v.

KAISER FOUNDATION HOSPITALS, a
California corporation,

Defendant.

Case No.: 18-cv-00780-KSC

ORDER

**(1) GRANTING FINAL APPROVAL
OF CLASS/ COLLECTIVE ACTION
SETTLEMENT; and**

**(2) GRANTING MOTION FOR
ATTORNEYS’ FEES, LITIGATION
COSTS, CLASS REPRESENTATIVE
INCENTIVE AWARDS AND
SETTLEMENT ADMINISTRATION
EXPENSES**

[Doc. Nos. 86, 92]

Before the Court are plaintiffs’ Motion for Final Approval of Class/Collective Action Settlement (the “Final Approval Motion,” Doc. No. 92) and Motion for Attorneys’ Fees, Litigation Costs, Class Representative Incentive Awards, and Settlement Administration Expenses (the “Fee Motion,” Doc. No. 86, and collectively the “Motions”). The Motions are unopposed. The Court heard oral argument on the Motions on June 9, 2021 (the “Fairness Hearing”). The Court has carefully considered the parties’ moving

1 papers, the arguments of counsel, and the applicable law. For the reasons stated below, the
2 Court finds the proposed settlement is fair, reasonable, and adequate, and **GRANTS** the
3 Final Approval Motion. The Court further finds that that the attorneys’ fees and other
4 expenditures from the common fund are reasonable, and **GRANTS** the Fee Motion.

5 **I. BACKGROUND**

6 **A. Plaintiffs’ Allegations**

7 Plaintiffs Monica Smith and Erika Sierra (“plaintiffs”) filed this action individually
8 and on behalf of similarly-situated employees of defendant Kaiser Foundation Hospitals
9 (“defendant”), alleging that defendant violated the Fair Labor Standards Act (“FLSA”) and
10 California wage and hour laws. *See generally* Doc. No. 1 (complaint); Doc. No. 70
11 (amended complaint). The Court has previously described plaintiffs’ allegations in detail
12 and presumes familiarity with the facts of the case. Briefly stated, defendant employs
13 “Telemedicine Specialists,” “Customer Support Specialists,” and “Wellness Specialists”
14 to receive and respond to call center calls. Plaintiffs allege that defendant, in violation of
15 federal and state labor laws, failed to compensate these employees for certain tasks
16 performed at the start of each shift, during their off-the-clock breaks, and at the end of their
17 shift. The allegedly uncompensated tasks included, *inter alia*, starting up and shutting
18 down computers, logging into and out of applications, locating equipment, shredding
19 patient notes, and traveling to defendant’s offices for training, meetings, and to pick up
20 equipment. Plaintiffs further allege that defendant failed to reimburse employees for
21 necessary business expenditures.

22 **B. Procedural History**

23 On February 13, 2019, following the exchange of “voluminous” information
24 between the parties and two full-day sessions facilitated by a third-party mediator, the
25 parties reached an agreement in principle to settle. Doc. No. 92-1 at 10-11; *see also* Doc.
26 No. 65 (Notice of Settlement). Thereafter, plaintiffs twice moved for preliminary approval
27 of the settlement. *See* Doc. Nos. 67, 72, 78, 81. The Court denied those motions, citing
28 concerns with the structure of the settlement, the scope of the proposed FLSA collective,

1 failure to obtain proper consent for settlement of the FLSA claims, and inadequate notice.
2 *See, e.g.*, Doc. No. 72 at 18-23; Doc. No. 81 at 29, 31-33. The Court required plaintiffs to
3 remedy these deficiencies in any renewed motion for preliminary approval.

4 On October 6, 2020, plaintiffs moved for a third time for preliminary settlement
5 approval. Doc. No. 82. The renewed motion was supported by a Second Amended
6 Collective and Class Action Settlement Agreement¹ and an amended proposed notice. *See*
7 *generally id.* Upon review of plaintiffs' renewed motion and supporting documents, the
8 Court found that plaintiffs had "addressed all the deficiencies and concerns previously
9 identified by the Court and have made all appropriate amendments and corrections to the
10 Second Amended Agreement and the Amended Notice." Doc. No. 84 at 2. The Court
11 therefore preliminarily approved the settlement, provisionally certified the Class and the
12 Collective,² and directed that notice be mailed to each member of the Settlement Class. *Id.*
13 The Court set a date for the Fairness Hearing and ordered that any objections to the
14 settlement be filed with the Court no later than April 19, 2021. *Id.* at 3.

15 The Fairness Hearing took place on June 9, 2021. All parties were represented by
16 counsel. No class members filed objections to the settlement nor appeared at the Fairness
17 Hearing. *See* Doc. No. 92-1 at 28; Doc. No. 95 at 3. Only six of the 474 Class or Collective
18 members requested exclusion. *See id.*

19 **C. The Settlement**

20 The Settlement Agreement provides that defendant will pay a gross settlement
21 amount of \$1,475,000 (plus all applicable employer-side payroll taxes).³ Subject to the
22
23

24
25 ¹ The Court will hereafter refer to this document, which was attached to the motion for preliminary
26 approval and to the Final Approval Motion, as the "Settlement Agreement." *See* Doc. Nos. 82-1, 92-2.
All citations to the Settlement Agreement are to the numbered paragraphs therein.

27 ² The Court will hereafter refer to the Class and the Collective jointly as the "Settlement Class." *See* Doc.
28 No. 92-2 at ¶1.39.

³ The Court will hereafter refer to this as the "Gross Settlement Amount" or the "Settlement Funds."

1 Court's approval, the following amounts are to be deducted from the Gross Settlement
2 Amount:

3	Class Counsel's Fees	\$442,500.00
4	Class Counsel's Costs	\$55,000.00
5	Service Awards	\$15,000.00
6	Settlement Administration Costs	\$9,900.00 ⁴
7	PAGA Payment	\$30,000.00

8
9 See Doc. No. 92-2 at ¶¶1.25, 5.1, 5.2, 5.3, 5.4. The remaining \$922,600.00 (the "Net
10 Settlement Amount") will be distributed to members of the Settlement Class. *Id.* at ¶1.25.
11 The parties have allocated \$203,142.50 of the Net Settlement Amount to the FLSA
12 Collective, to be distributed to its members according to the following formula:

13 The FLSA Settlement Payment to a FLSA Collective Member will be
14 calculated by dividing the number of Eligible Workweeks attributed to the
15 FLSA Collective Member worked during the Collective Period by all Eligible
16 Workweeks during the Collective Period attributed to members of the FLSA
17 Collective, multiplied by \$203,142.50. Otherwise stated, the formula for a
18 FLSA Collective Member is: (individual's Eligible Workweeks ÷ total FLSA
19 Collective Eligible Workweeks) x \$203,142.50.

20 The number of Eligible Workweeks for Telemedicine Specialists shall be
21 multiplied by 2.4, because they earned, on average, 2.4 times the amount
22 earned by other FLSA Collective Members. Otherwise stated, the formula for
23 a FLSA Collective Member who worked as a Telemedicine Specialist is:
24 ((individual Eligible Workweeks x 2.4) ÷ total FLSA Collective Eligible
25 Workweeks) x \$203,142.50.

26 Doc. No. 92-2 at ¶5.5.1.

27 ⁴ At the time plaintiffs filed their Final Approval Motion, they estimated the Settlement Administration
28 Costs would not exceed \$15,000. Doc. No. 92-1 at 23. Plaintiffs recently reported that their counsel's
actual costs were \$9,900. Doc. No. 93 at 6.

1 The parties have allocated all remaining funds (i.e., the Net Settlement Amount
2 minus the \$203,142.50 allocated to the FLSA Collective) to the Settlement Class, to be
3 distributed to its members according to the following formula:

4 The individual settlement payment to a Settlement Class Member will be
5 calculated by dividing the number of Eligible Workweeks attributed to the
6 Settlement Class Member worked during the Class Period by all Eligible
7 Workweeks during the Class Period attributed to members of the Settlement
8 Class, multiplied by the Net Settlement Amount (after reduction of the
9 \$203,142.50 attributed to FLSA Collective Members). Otherwise stated, the
10 formula for a Class Member is: (individual's Eligible Workweeks ÷ total
11 Settlement Class Eligible Workweeks) x (Net Settlement Amount -
12 \$203,142.50).

13 The number of Eligible Workweeks for Telemedicine Specialists shall be
14 multiplied by 2.4, because they earned, on average, 2.4 times the amount
15 earned by other Settlement Class Members. Otherwise stated, the formula for
16 a Class Member who worked as a Telemedicine Specialist is: ((individual
17 Eligible Workweeks x 2.4) ÷ total Settlement Class Eligible Workweeks) x
18 (Net Settlement Amount - \$203,142.50).

19 Doc. No. 92-2 at ¶5.6.1.

20 Each eligible Settlement Class member will automatically receive a check for the
21 appropriate amount(s) based on these formulas. Any distribution checks not cashed within
22 the timeframes set forth in the Agreement will be cancelled. *Id.* at ¶5.6.2. If the total
23 amount of cancelled settlement distributions is greater than \$5,000, those funds will be re-
24 distributed *pro rata* to members of the Settlement Class who cashed the first distribution
25 check, and otherwise will be paid to California Rural Legal Assistance, Inc. *Id.*

26 In exchange for the Gross Settlement Amount, plaintiffs and all other members of
27 the Settlement Class agree to release any and all claims that “relate in any way” to the
28 allegations in the Complaint, including defendant’s alleged violations of California’s Labor
Code and unfair competition laws, and further agree to a general release of claims under
California Civil Code § 1542. *See id.* at ¶¶6.1, 6.3. The members of the FLSA Collective
further agree to release claims related to the allegations in the complaint arising under the
FLSA. *Id.* at ¶6.2. Ms. Smith and Ms. Sierra, as class representatives, generally release

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.