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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF ALAMEDA
11

12 TONYA HALFHILL, individually and on
behalf of other individuals similarly situated,

13 Plaintiff,

14 v.

15 KAISER FOUNDATION HOSPITALS., a
California Nonprofit Corporation; a California
16 corporation; and DOES 1 through 100,
inclusive,

17 Defendants.
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Case No. RG21096610

*Assigned for All Purposes to the Honorable
Noël Wise, Dept. 21*

**NOTICE OF MOTION AND MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND AWARD OF
SETTLEMENT ADMINISTRATION COSTS
AND APPLICATION FOR AWARD OF
ATTORNEYS' FEES AND COSTS AND
CLASS REPRESENTATIVE PAYMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

*[Filed Concurrently with the Declarations of
Shaun Setareh, William Restis, Kevin Stoops,
Kiley Grombacher, Tonya Halfhill, Danyell
Sanders, Mario Moreno, Susie Drennan, Jessica
Jewell, and Nicole Bench; [Proposed] Order]*

Date: September 24, 2024

Time: 1:30 p.m.

Place: Department 21

Reservation No.: 956334734935

Action Filed: April 20, 2021

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1 TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on September 24, 2024, at 1:30 p.m., or as soon thereafter as the
3 matter may be heard in Department 21 of the above-entitled Court located 1225 Fallon Street, Oakland,
4 CA 94612, Plaintiffs TONYA HALFHILL, DANYELL SANDERS, MARIO MORENO and SUSIE
5 DRENNAN (“Plaintiffs”) will and do hereby move this Court for an Order finally approving:

- 6 1. The certification of the Settlement Class for settlement purposes pursuant to Code of Civil
7 Procedure (“CCP”) section 382;
- 8 2. The Settlement Agreement, including the following authorized terms;
- 9 3. The appointment of Setareh Law Group, Bradley/Grombacher, LLP, Sommers Schwartz,
10 P.C., and The Restis Law Firm, P.C. as Class Counsel and Plaintiffs Tonya Halfhill, Danyell
11 Sanders, Mario Moreno, and Susie Drennan as Class Representatives for the Settlement Class;
- 12 4. Class Counsel’s application for fees of \$3,333,333 and for litigation costs of \$71,663.88;
- 13 5. Settlement administration costs to ILYM in the amount of \$170,000;
- 14 6. Plaintiffs’ application for a Class Representative Payment of \$7,500 each to Plaintiffs Tonya
15 Halfhill, Danyell Sanders, Mario Moreno, and Susie Drennan; and
- 16 7. Entry of the concurrently filed [Proposed] Order Granting Final Approval of Class Settlement,
17 and Entering Judgment to give finality to the Settlement.

18 This Motion is made on the following grounds: (1) the Settlement meets all the requirements for
19 class certification for settlement purposes under CCP section 382; (2) Plaintiffs and their counsel are
20 adequate to represent the Settlement Class; (3) the terms of the Settlement are fair, adequate and
21 reasonable; and (4) the notice process performed by the Settlement Administrator comports with all
22 applicable due process requirements. In view of the foregoing, the [Proposed] Order and Judgment
23 Granting Final Approval of Class Action Settlement submitted with this Motion should be entered.

24 This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points
25 and Authorities, the Declarations of Shaun Setareh, William Restis, Kevin Stoops, Kiley Grombacher,
26 Tonya Halfhill, Danyell Sanders, Mario Moreno, Susie Drennan, Jessica Jewell, and Nicole Bench, all
27 exhibits thereto, all papers and pleadings on file with the Court in this action, all matters judicially
28 noticeable, and on such oral and documentary evidence as may be presented at the hearing on this

1 Motion.

2 DATED: August 30, 2024

SETAREH LAW GROUP

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4

/s/ Farrah Grant

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SHAUN SETAREH

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THOMAS SEGAL

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FARRAH GRANT

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Attorneys for Plaintiff

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Danyell Sanders

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Tonya Halfhill, Danyell Sanders, Mario Moreno, and Susie Drennan (“Plaintiffs”) seek final approval of a **\$10,000,000** non-reversionary class and representative action settlement of wage and hour claims brought against Defendant.¹ The Settlement Class consists of 101,631 class members.

6 The Net Settlement Amount (“NSA”) expected to be paid to Class Members – after payment of Class Counsel fees of one-third of the GFV (\$3,333,333) and costs up to \$150,000, settlement administration costs of \$170,000, Plaintiffs’ enhancement awards of \$7,500 each (\$30,000 total), and a payment to the California Labor & Workforce Development Agency (“LWDA”) pursuant to the PAGA of \$225,000 (75% of the total PAGA Payment of \$300,000) is \$6,091,667². Including the 25% portion of the PAGA Payment, or \$75,000, that will be paid to PAGA Members, the Net Settlement Amount (“NSA”) being paid to Class Members is \$6,166,667, with an average estimated individual Class Payment of approximately **\$59.95** and the highest estimated individual Class Payment being **\$133.02**. Declaration of Nicole Bench (“Bench Decl.”) ¶ 18. Class Members will not have to make claims but instead will be mailed checks directly. Any uncashed checks will be sent to the *cy pres* California Rural Legal Assistance.

16 The Settlement occurred as a result of extensive, arm’s-length negotiations by experienced counsel after sufficient discovery and investigation into the facts and with the guidance of David Rotman, an experienced and well-respected class action mediator. The Settlement seeks to settle and resolve this matter, resulting in financial benefit to the Class Members on terms that are fair, reasonable, and adequate. The **\$10,000,000** non-reversionary Gross Fund Value (“GFV”) will cover: (a) all Settlement Shares paid to Class Members pursuant to the Settlement; (b) the PAGA Civil Penalties of \$300,000.00 (75% of which will be paid to California’s Labor and Workforce Development Agency (the “LWDA”) and 25% of which will be paid to PAGA Settlement Group Members, pursuant to Labor Code section 2699(i)); (c) Plaintiffs’ Class Representative Payments; (d) the Class Counsel Fees and Expenses Payment; and (e) the Settlement Administrator’s fees and expenses. The Settlement is fair, reasonable and adequate and the Court should

27 ¹ The Amended Settlement Agreement (the “Settlement”), is attached as Exhibit A to the Declaration of Shaun Setareh.

28 ² This includes the \$200,000 allocated to the FLSA Subclass.

grant final approval.

II. THE MAJOR TERMS OF SETTLEMENT

Key provisions of the proposed Settlement include the following:

- Defendant will pay **\$10,000,000** as the GFV.
- Defendant will not oppose Class Counsel’s application for fees of 1/3 of the GFV (**\$3,333,333**) and costs not to exceed **\$150,000**, to be paid out of the GFV.
- The notice portion of the Settlement was administered by a third-party administrator, ILYM, which will also distribute the Settlement payments, for a total cost of **\$170,000** for their services.
- Out of the GFV, **\$300,000** is allocated to resolve the PAGA claims, with 75%, i.e., **\$225,000**, to be paid by the Settlement Administrator to the LWDA, and 25%, i.e., **\$75,000**, to be paid to PAGA Members.
- Defendant will not oppose the application for Class Representative Service Awards in the amount of **\$7,500** to each of the Plaintiffs (or **\$30,000** total), to be paid out of the GFV.
- After deducting Class Counsel’s attorneys’ fees and costs, enhancement payment to Plaintiffs, settlement administration costs, the payment to the LWDA, the remainder – i.e., the NSA – is calculated to be at least \$6,091,667. Including the 25% portion of the PAGA Payment, or \$75,000, that will be paid to PAGA Members, the Net Settlement Amount (“NSA”) being paid to Class Members is **\$6,166,667**. Each Participating Class Member, FLSA Subclass Member and each PAGA Member will receive a *pro rata* share based upon the number of weeks worked.
- Settlement Class Members will be mailed a check so long as they do not opt out. PAGA Members will be mailed a check regardless of whether they opt out of the Settlement.
- The Settlement will release specified wage-and-hour claims for those Settlement Class Members who do not opt out of the Settlement. FLSA Subclass Members who timely cash or otherwise negotiate their Settlement Payment Check will be deemed to have opted into the Action for purposes of the FLSA and, as to those Class Members, the Released Claims include any and all claims the Class Members may have under the FLSA arising under or related to the alleged claims during the FLSA Subclass Period.
- No portion of the GFV will revert to Defendant. Any checks issued by ILYM remaining uncashed

for more than 180 days after issuance will sent to the cy pres California Rural Legal Assistance.
(Declaration of Shaun Setareh (“Setareh Decl.”), ¶ 34, **Exh. A.**)

III. STATEMENT OF FACTS

A. THE LAWSUITS AND ALLEGATIONS

This settlement is the culmination of three wage and hour lawsuits brought against Kaiser. *Halfhill v. Kaiser Foundation Hospitals* (Alameda Co. Sup. Ct. Case No. RG21096610, filed April 20, 2021), *Sanders v. Kaiser Foundation Hospitals* (San Francisco Co. Sup. Ct. Case No. CGC-21-595263, filed September 16, 2021), and *Moreno and Drennan v. Kaiser Foundation Hospitals* (San Diego Sup. Ct. Case No. 37-2021-00042468, filed October 5, 2021). On March 22, 2024, an amended complaint was filed so that all of the allegations are included in one complaint. (Setareh Decl. ¶ 16.) Plaintiffs allege causes of action for: 1) Failure to Pay All Wages; 2) Failure to Pay Overtime Compensation; 3) Missed Meal Breaks; 4) Missed Rest Breaks; 5) Failure to Indemnify; 6) Failure to Furnish an Accurate, Itemized Wage Statement upon Payment of Wages in Violation of California Labor Code § 226; 7) Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203); 8) Violations of California Business & Professions Code §§ 17200, et seq.; 9) PAGA; and 10) Violations of the Fair Labor Standards Act. (*Id.*)

B. INVESTIGATION AND DISCOVERY

Plaintiffs and Defendant engaged extensively in formal and informal discovery prior to resolving the Action. (Setareh Decl., ¶¶ 27-29). Both sides propounded written discovery. Plaintiffs Moreno and Drennan engaged in extensive discovery with Kaiser, including exchanging multiple sets of interrogatories and requests for production of documents. (Declaration of Kevin Stoops (“Stoops Decl.”), ¶ 16). Plaintiff Sanders propounded Requests for Production of Documents and both Special and Form Interrogatories upon Defendant as to its policies, procedures, and practices with respect to the alleged wage and hour claims during the Class Period, as to the identification of and time and payroll records for the putative class members, and as to Plaintiff Sanders, to which Defendant responded. (Setareh Decl., ¶ 27.) On May 13, 2022, Plaintiff Sanders filed motions to compel regarding Defendant’s Special Interrogatory and Request for Production of Document responses. These motions were fully briefed and denied without prejudice on July 25, 2022, with the San Francisco Superior Court instructing the parties to confer on a Belaire-West procedure. (Setareh Decl., ¶ 27.)

1 In addition to this exchange of formal discovery, the Parties agreed to attend mediation to attempt
2 to resolve the action entirely and further agreed to engage in informal discovery in advance and in
3 preparation thereof. (*Id.* ¶ 28.) This included, but was not limited to, the informal exchange of a sample
4 of time and pay records and review of the same; the exchange of written policies and agreements
5 governing the Class throughout the Class Period; and other documents relevant to the litigation. (*Id.*)

6 Defendant produced a sampling of payroll and timekeeping records and relevant company written
7 policies. (*Id.* ¶ 29.) Plaintiffs hired an expert to analyze the produced data with respect to potential
8 damages and penalties in preparation for mediation. From the data and other documents obtained from
9 Defendant pertaining to the Class and Defendant’s policies, Plaintiffs’ expert was able to analyze the data
10 sampling, and Plaintiffs were then able to thoroughly assess the merits of each claim. (*Id.*) The parties
11 engaged in substantial investigation and discovery which enabled them to enter into this settlement.

12 **C. SETTLEMENT NEGOTIATIONS AND SETTLEMENT**

13 The Parties agreed to mediate Plaintiffs’ alleged wage and hour and PAGA claims and
14 selected David Rotman to serve as mediator. (Setareh Decl., ¶ 30.) With the aid of Mr. Rotman, the
15 parties reached an agreement to settle all claims on a class-wide basis. (*Id.*) Each of the Parties,
16 represented by its respective counsel, recognized the risk of an adverse result in the Action. (*Id.*) The
17 parties agreed to settle the Action and resolve all claims alleged against Defendant. (*Id.*)

18 **D. REASONABLENESS OF THE SETTLEMENT**

19 Plaintiffs’ counsel believes that the Settlement is in the best interest of the Class Members based
20 on their investigation and discovery, their detailed understanding of the issues raised, and the outcome of
21 extensive settlement negotiations facilitated by an experienced and knowledgeable mediator. (Setareh
22 Decl. ¶ 31; Stoops ¶ 35; Declaration of Kiley Grombacher (“Grombacher Decl.”) ¶ 37.) Plaintiffs’ counsel
23 balanced the Settlement against the probable outcome of class certification, liability, the range of recovery
24 at trial, the risks of losing class certification, losing at trial, or not recovering as much as provided by the
25 proposed Settlement (including recovering nothing from Defendants even if it were found liable), as well
26 as the difficulties and complexity of the litigation, the lengthy process of litigating to judgment, and the
27 various possible delays and appeals. (Setareh Decl., ¶ 31.)
28

1 **IV. DESCRIPTION OF THE SETTLEMENT**

2 **A. APPOINTMENT OF SETTLEMENT ADMINISTRATOR**

3 The Parties agreed to the appointment of ILYM to act as the Settlement Administrator; ILYM
4 provided notice to the Class Members of the Settlement pursuant to the Court's order preliminarily
5 approving the Settlement, and will administer distribution of the GFV, among other administration duties.
6 The Settlement provides for estimated administration costs of \$170,000. (Settlement § I KK.) The
7 administrator is requesting \$170,000 for its services. (Bench Decl. ¶ 19.)

8 **B. DESCRIPTION OF THE SETTLEMENT CLASS**

9 For settlement purposes only, the Parties agree to the certification of a class pursuant to
10 California *Code of Civil Procedure* § 382 defined as: All non-exempt persons who were employed
11 by Defendant in the State of California at any time during the Class Period, i.e. April 20, 2017 through
12 December 31, 2023. (Settlement, ¶ I F-G.)

13 The FLSA Subclass is composed of all Settlement Class Members who were employed by
14 Defendant in the State of California between April 20, 2018 through December 31, 2023. (*Id.*, ¶ I L.)

15 PAGA Members are defined as Class Members employed with Defendant in California at any
16 time during the PAGA Period i.e. between June 7, 2020 through December 31, 2023. (*Id.*, ¶ I W.)

17 **C. SCOPE OF THE RELEASES**

18 **1. Release of Class Claims**

19 As of the date of the Order Granting Final Approval, Class Members who do not opt
20 out shall release Defendant and its present and former affiliates and all of their officers,
21 directors, employees, agents, servants, registered representatives, attorneys, insurers,
22 successors and assigns, and any other persons acting by, through, under or in concert
23 with any of them ("Releasees"), from any and all claims, debts, liabilities, demands,
24 obligations, penalties, premium pay, guarantees, costs, expenses, attorney's fees,
25 damages, actions or causes of action of whatever kind or nature, whether known or
26 unknown, contingent or accrued, under any legal theory under federal and state law for
27 any alleged failure to pay all wages due (including minimum wage and overtime
28 wages), claims regarding rounding, grace periods, shift tolerance, failure to pay for all
hours worked (including off-the clock work), failure to provide meal and rest periods,
short/late meal and rest periods, failure to relieve of all duties during meal and rest
periods, combining of meal and rest periods, that Defendant's exemption permit from
the DLSE is not valid or does not apply to Class Members, failure to timely pay wages
and final wages, failure to properly calculate the regular rate of pay, failure to pay or
properly calculate meal period premiums, donning and doffing, pre or post-shift testing
or inspections, COVID-19 related activities including testing, reporting, and queuing
for testing, reporting time pay, failure to furnish accurate wage statements including
claims derivative and/or related to these claims, liquidated damages, conversion of
wages, that the Labor Code Section 514 exemption does not apply to Defendant's

employees, pre and post-shift work and record-keeping violations, up to and including the date of preliminary approval by the Court. This Release shall include all claims and theories arising under the California Labor Code, wage orders, and applicable regulations, including Labor Code Sections 201, 202, 203, 204, 206, 218, 218.5, 226, 226.3, 226.7, 227, 510, 511, 512, 515, 517, 551, 552, 558, 1174, 1175, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, and 1199, all claims and theories arising under Labor Code Section 2802 (except that the release shall not include claims related solely to working from home under Labor Code Section 2802), as well as claims under Business and Professions Code section 17200 *et seq.* based on alleged violations of the above Labor Code provisions, as alleged in the lawsuits. The release shall run through December 31, 2023. (Settlement ¶ I. DD.)

2. FLSA Release

FLSA Subclass Members who timely cash or otherwise negotiate their Settlement Payment Check will be deemed to have opted into the Action for purposes of the FLSA and, as to those Class Members, the Released Claims include any and all claims the Class Members may have under the FLSA arising under or related to the alleged claims during the FLSA Subclass Period. (*Id.*)

3. PAGA Release

Plaintiffs Tonya Halfhill, Danyell Sanders, Mario Moreno, and Susie Drennan, as proxies and agents of the LWDA, are releasing Defendant and Released Parties the claims of the LWDA. The scope of the LWDA's release is limited to and co-extensive with the scope of the PAGA notice letters submitted by Plaintiffs on August 19, 2021, October 8, 2021, March 26, 2021, April 15, 2021, and March 6, 2024 which allege PAGA claims under Labor Code Sections 201, 202, 203, 204, 206, 218, 218.5, 226, 226.3, 226.7, 227, 510, 511, 512, 515, 517, 551, 552, 558, 1174, 1175, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, and 1199. (Settlement ¶ I. EE.)

D. GROSS FUND VALUE AND ALLOCATION OF SETTLEMENT FUNDS

The Settlement provides for a GFV of **\$10,000,000**, and which includes but is not limited to, all settlement payments to the Class Members, all attorneys' fees, all litigation costs, all settlement administration expenses, all payments to the LWDA, and the enhancement awards to Plaintiffs. (*Id.*, ¶ I M.) Defendant will be responsible for any employer payroll taxes. (*Id.*, ¶ I I.)

This is a non-reversionary settlement, and none of the GFV shall revert to Defendant, with the funds of checks uncashed more than 180 days after issue being directed to the cy pres California Rural Legal Assistance. (*Id.*, ¶ I I; ¶ IX 2.) California Rural Legal Assistance is a proper cy pres recipient, as they are a non-profit charitable organization that provides free legal services to low-income individuals in California, including assisting with labor and employment cases. (Declaration of Jessica Jewell ¶¶ 1-8).

The Parties have agreed to a settlement formula which allocates settlement amounts to Class Members, Collective Members and PAGA Members on a *pro rata* basis, based on their number of workweeks. (Settlement, ¶ VI). All Individual Settlement Payments will be allocated as follows: one-

1 third (1/3) wages, one-third (1/3) interest and one-third (1/3) penalties. (*Id.*, ¶ X.)

2 Fourteen days after the Effective Date of the Settlement, Defendant will deposit the settlement
3 amount to ILYM. Within fourteen days of the funding of the Settlement, ILYM will issue payments
4 to: (a) Class Members; (b) the Labor and Workforce Development Agency (LWDA); (c) Plaintiffs;
5 and (d) Class Counsel. The Settlement Administrator will also issue a payment to itself for Court-
6 approved services performed in connection with the Settlement. (*Id.*, ¶ II.)

7 **E. PAGA PAYMENT TO THE LWDA**

8 The Parties agree to allocate **\$300,000** of the GFV for settlement of claims for civil penalties under
9 PAGA, Labor Code § 2699, *et seq.* (*Id.*, ¶ I R.) Pursuant to Labor Code section 2699(i), 75% of that
10 amount (**\$225,000**) will be paid to the LWDA as the LWDA Payment. (*Id.*) The remaining 25%
11 (**\$75,000**), will be distributed to PAGA Members on a *pro rata* basis. (*Id.*)

12 **F. CURRENT SUMMARY OF THE NOTICE PROCESS**

13 On May 6, 2024, Defendant provided ILYM with the class data file, which contained the
14 name, social security number, last known mailing address, last known telephone number, the number
15 of Class Workweeks and FLSA Workweeks worked for each Class Member during the Class Period
16 and the number of PAGA Pay Periods worked for each PAGA Employee during the PAGA Period.
The Class List contained 101,631 individuals. (Bench Decl. ¶ 5.)

17 Prior to mailing notice, ILYM used the National Change of Address database to update the
18 addresses for the Class Members. *Id.* ¶ 6. On June 4, 2024, after updating mailing addresses, ILYM mailed
19 the Notice Packets by First Class Mail to the 101,631 Class Members. *Id.* ¶ 8.

20 1,652 Notice Packets were initially returned as undeliverable. (Bench Decl. ¶ 9.). 42 Notice
21 Packets were remailed as a result of a forwarding address provided by the USPS and 1,126 have been
22 re-mailed as a result of ILYM Group's skip tracing efforts. *Id.* ¶ 10. Ultimately, 484 Notice Packets out
23 of 101,631 were not deliverable. *Id.* ¶ 11.

24 ILYM also set up a telephone number for Class Members to call regarding the case. *Id.* ¶ 7. A link
25 to ILYM Group's website was set up for Class Members to access relevant court documents. *Id.*

26 The class has responded very favorably to the settlement. ILYM received 128 requests for
27 exclusion from the Settlement (which is .12% of the Settlement Class) and 5 objections to the Settlement
28 (which is .004% of the Settlement Class.) *Id.* ¶¶ 12-13.

1 **V. ARGUMENT**

2 **A. THE COURT SHOULD REAFFIRM ITS CONDITIONAL CERTIFICATION**
3 **OF THE SETTLEMENT CLASS**

4 Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable and its
5 members are too numerous for joinder to be practical; (2) the representative and absent class members
6 share a community of interest and questions of law and fact common to the class predominate over
7 questions unique to individual class members; (3) the representative's claims are typical of the claims
8 of the class; and (4) the representative will fairly and adequately represent the interests of the class.
9 *See, e.g., Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.

10 This Court found that the Settlement Class meets all the requirements for class certification
11 for settlement purposes when it granted preliminary approval on April 16, 2024. No subsequent events
12 have cast doubt on this determination. Accordingly, this Court should reaffirm its conditional grant
13 of class certification for settlement purposes.

14 **B. THE COURT SHOULD FINALLY APPROVE THE SETTLEMENT**
15 **BECAUSE IT IS A FAIR, REASONABLE AND ADEQUATE COMPROMISE**
16 **OF THE DISPUTED CLAIMS IN LIGHT OF DEFENDANT'S POTENTIAL**
17 **LIABILITY EXPOSURE AND THE RISKS TO BOTH SIDES OF CONTINUED**
18 **LITIGATION**

19 California courts favor settlement. *See, e.g., Stambaugh v. Sup. Ct.* (1976) 62 Cal.App.3d 231,
20 236. Unlike most settlements, class action settlements involve a court approval process that exists to
21 prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v. Sup. Ct.*
22 (1980) 103 Cal.App.3d 573, 578-79. This approval process consists of preliminary settlement approval,
23 notice being given to class members, and a final fairness and approval hearing at which class members
24 may be heard with respect to the settlement. *Id.*

25 **1. The Settlement is Reasonable**

26 The Settlement results in a substantial benefit to the Settlement Class. Courts often approve
27 settlements where class members receive only pennies or even just coupons or vouchers. *See, e.g.,*
28 *Nordstrom Commission Cases*, (2010) 186 Cal.App.4th 576, 590 (affirming final approval of wage-
and hour class action settlement where 20% of the fund allocated to the class was merchandise
vouchers). Here, each Class Member will be sent a live check representing his or her Settlement
Share. Moreover, the average estimated payment to participating Class Members is \$59.95, and the

1 highest individual Settlement Share is currently estimated to be \$133.02. (Bench Decl., ¶ 18.) Thus,
2 the Settlement provides significant, meaningful relief for hotly disputed wage-and-hour violations,
3 making it reasonable and in the best interests of the Class.

4 **2. The Settlement Was Reached at Arm’s Length Through Experienced**
5 **Counsel and an Experienced Mediator with Sufficient Information to**
6 **Intelligently Negotiate a Fair Settlement**

7 A settlement is presumptively fair where it is reached through arm’s-length bargaining, is based
8 on sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel
9 involved is experienced in similar litigation, and the percentage of objectors is small. *Dunk v. Ford Motor*
10 *Co.* (1996) 48 Cal.App.4th 1794, 1802. In deciding whether to approve a proposed settlement, a trial court
11 has broad powers to determine if the proposed settlement is fair under the circumstances of the case.
12 *Mallick v. Sup. Ct.* (1979) 89 Cal.App.3d 434, 438. In exercising these powers, the overriding concern is
13 to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk*, 48 Cal.App.4th at 1801
(internal quotations omitted). Relevant factors for that determination include, but are not limited to:

14 [T]he complexity and likely duration of further litigation, the risk of maintaining class
15 action status through trial, the amount offered in settlement, the extent of discovery
16 completed and the state of the proceedings, the experience and views of counsel, the
presence of a governmental participant, and the reaction of the class members to the
proposed settlement.

17 *Id.* These factors require balancing and are non-exhaustive and, as such, trial courts should tailor the
18 factors considered to each case and give due regard to “what is otherwise a private consensual agreement
19 between the parties.” *Id.*

20 “In the context of a settlement agreement, the test is not the maximum amount plaintiffs might
21 have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the
22 circumstances.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250. Because settlements
23 inherently involve compromise, even settlements providing for substantially narrower relief than likely
24 would be obtained if the suit were successfully litigated can be reasonable because “the public interest
25 may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding
26 litigation.” *Id.* (quoting *Air Line Stewards, etc., Local 550 v. Am. Airlines, Inc.* (7th Cir. 1972) 455 F.2d
27 101, 109). In addition, courts review the discovery process and information received through it to aid
28

1 them in assessing whether the parties sufficiently developed the claims and their supporting factual bases
2 before reaching settlement. *See Kullar v. Foot Locker Retail Inc.* (2008) 168 Cal.App.4th 116, 129-131
3 (“*Kullar*”). Information is sufficient where it allows the parties and the court to form “an understanding
4 of the amount that is in controversy and the realistic range of outcomes of the litigation.” *Clark v. Am.*
5 *Residential Servs. LLC* (2009) 175 Cal.App.4th 785, 801.

6 The Settlement is the product of arm’s-length negotiations between the Parties occurring with the
7 aid of an experienced mediator. In light of the uncertainties of protracted litigation and the state of the
8 law regarding the legal positions of the Parties, the Settlement amount reflects the best feasible recovery
9 for the Class Members. The settlement amount is, of course, a compromise figure, affected by many
10 uncertainties, but it is a good result. By necessity the amount took into account risks related to liability,
11 damages, and all the defenses asserted by Defendant. Moreover, each Class Member has been given the
12 opportunity to opt-out of the Settlement, allowing those who feel they have claims that are greater than
13 the benefits they can receive under this Settlement to pursue their own claims. For the 101,631 members
14 of the Settlement Class, the average gross recovery is **\$59.95** per Class Member. Given the strong case
15 that Defendant could bring to bear to challenge certification and liability, this is a reasonable sum to have
16 achieved in settlement.

17 Despite a total potential recovery of \$36,763,241 on their class claims excluding penalties for
18 wage statements, waiting time and PAGA, Plaintiffs recognized the challenges they would have to face
19 in certifying a class action and establishing liability on the wage and hour claims. (Setareh Decl. ISO
20 Motion for Preliminary Approval filed January 10, 2024, ¶ 61.) Plaintiffs estimate that their likelihood of
21 prevailing on all their causes of action are extremely low and thus their likelihood of recovering \$36
22 million or anything close to that amount on behalf of a class is very unlikely. For those claims, if any,
23 that are certified for class treatment, Plaintiffs must prevail at a trial on the merits. In addition to having
24 to prove that Plaintiffs and other workers were not paid for all hours worked, Plaintiffs must establish
25 willfulness with respect to their waiting time penalties claim under Labor Code Section 203. (*Id.*)

26 With respect to the claims asserted on behalf of the Settlement Class in this case, there are
27 significant risks that support the reduced compromise amount. These risks include, but are not limited to,
28 the following:

1 (i) The risk that Plaintiffs would be unable to establish liability for allegedly unpaid
2 straight time and overtime wages. *See Duran v. U.S. Bank Nat’l Ass’n* (2014) 59 Cal.4th 1, 39 & fn.
3 33 (“*Duran*”), citing *Dilts v. Penske Logistics, LLC* (S.D. Cal. 2014) 2014 WL 205039 (dismissing
4 certified off-the-clock claims based on proof at trial).

5 (ii) The risk that Plaintiffs would not be able to prove liability for alleged failure to provide
6 compliant meal periods and rest breaks; or that to establish liability for the failure to provide
7 compliant meal periods and rest breaks would require an individualized inquiry that would prevent
8 these issues from being resolved on a class and/or collective basis. For example, Plaintiffs alleged
9 that Defendant required employees to perform work off-the-clock during meal and rest breaks, and
10 that Covid 19 screenings interrupted breaks. Defendant alleges that many employees took their meal
11 periods and rest breaks and that in order to prove whether each employee took their meal periods
12 and/or rest breaks would require an individualized inquiry that would prevent this issue from being
13 resolved on a class and/or collective basis.

14 (iii) The risk that a Court would find that employees are covered by CBAs that meet the
15 requirements of Labor Code Section 514 overtime exemption.

16 (iv) The risk that Defendant’s challenged employment policies might not ultimately
17 support class certification or a class-wide liability finding, *see, Duran*, 59 Cal.4th at 14 & fn. 28
18 (citing Court of Appeal decisions favorable on class certification issue without expressing opinion as
19 to ultimate viability of proposition). Defendant contends, for example, that it did not have a purported
20 policy of not paying required compensation, but rather a policy of paying compensation and of
21 requiring employees to report any unpaid compensable time, and that any failures to report by
22 employees cannot be legally charged to Defendant and, in any event, involve such highly
23 individualized circumstances as to prevent class and collective certification should this case be
24 litigated. *See, e.g., Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585 (employer not required
25 to pay employees for time spent performing work of which the employer had no knowledge).

26 (v) For the same reasons, liability, damages recovery, and certification risks are
27 heightened given: (1) the risk that uncertainties pertaining to the ultimate legality of Defendant’s
28 policies and practices could preclude class-wide awards of statutory penalties under Labor Code

1 section 226(e); (2) the risk that individual differences between settlement Class Members could be
2 construed as pertaining to liability, and not solely to damages, *see, Duran*, 59 Cal.4th at 19; and (3)
3 the risk that class or collective treatment could be deemed improper as to one or more claims except
4 for settlement purposes.

5 (vi) The risk that any civil penalties award under PAGA could be reduced by the Court in
6 its discretion, which would materially impact the recovery by the Class. *See* Labor Code section
7 2699(e)(1).

8 (vii) The risk that lengthy appellate litigation could ensue as to both liability and
9 certification issues, with associated litigation risk and costs, further enhances the value of a confirmed
10 settlement as opposed to unpredictable litigation.

11 (ix) The risk that the Court would find that huddles, patient hand-offs and donning/doffing
12 occurred while employees were clocked in. This is further compounded by the individualized inquiry
13 that could be necessary to make this determination for each employee based on his or her particular
14 circumstances, including but not limited to co-workers, employees, site, and working conditions.

15 (x) The risk that the Court would find that the Covid 19 screening claim is not certifiable
16 as Defendant claims it's screenings often only required employees to walk through a thermal scanner,
17 while at other locations a temperature was manually taken, which only took a few seconds. There is
18 also a risk that the Court would find that here the FLSA standard of "hours worked" applies.
19 Defendant alleges that Kaiser employees are covered by Wage Order 5-2001, which contains a special
20 definition of "hours worked" for employees in the healthcare industry. There is also a risk that any
21 off-the-clock Covid 19 screening claim is barred by the Public Readiness and Emergency
22 Preparedness Act ("PREP Act").

23 In these respects, Defendant strongly deny any liability and the propriety of class certification for
24 any reason other than settlement. Continued litigation of this lawsuit presented Plaintiffs and Defendant
25 with substantial legal risks that were (and continue to be) very difficult to assess. (Setareh Decl., ¶ 38.)

26 In light of the uncertainties of protracted litigation, the Settlement amount reflects a fair and
27 reasonable recovery for the Class Members. (*Id.*) The Settlement amount is, of course, a compromise
28 figure. (*Id.*) While Plaintiffs would certainly have preferred to recover more (and Defendant would

1 have preferred to pay less), this outcome is fair and reasonable. On that basis, it would be unwise to
2 pass up this settlement opportunity.

3 **3. The Small Percentage of Objections and Exclusions Also Shows That the**
4 **Settlement is Fair, Adequate and Reasonable**

5 The small percentage of objections and exclusions support the presumption of fairness and final
6 approval of the Settlement. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
7 Cal.App.4th 1135, 1152-1153 (finding 9 objections, and 80 opt-outs, from a class of 5,454, showed a
8 positive response from class members supporting settlement approval). Following notice to the 101,631
9 Settlement Class members, there are only 5 objections and 128 requests for exclusion. (Bench Decl. ¶¶
10 12-13). Only .12% of individuals chose to request exclusion. Only .004% of individuals filed an objection.
11 This results in an excellent class participation rate of 99.87%.

12 Notably, the objections do not take issue with any specific terms of the settlement. Ms.
13 Macnaughton's letter appears to express her desire that Kaiser take corrective actions to address wage
14 and hour issues. (Bench Decl. ¶ 13. Exh. C.). Ms. Erasquin's letter appears to be a dispute regarding
15 wage garnishments, which is unrelated to this case. (*Id.*) The letters of Ms. Brown, Mr. Wangberg
16 and Mr. Doucette appear to express their wish for a higher settlement amount. As a federal district
17 court has explained in responding to similar objections requesting a higher settlement amount:

18 Both objectors argue that the amount that they will receive in settlement is too low to
19 compensate for the damages they suffered—that Defendants' misconduct here was such
20 that they are entitled to much more than their Settlement payments. (*Id.*) However, the
21 objectors have not demonstrated that this is not a fair, reasonable and adequate settlement
22 overall; rather, they wish their payout had been greater. However, "the very essence of a
23 settlement is compromise, a yielding of absolutes and an abandoning of highest hopes."
24 *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 624 (9th Cir. 1982.)
25 *Perez v. DirecTV Group Holdings, LLC*, 2023 WL 1921376 *6 (C.D. Cal. 2023.) Furthermore:

26 [E]stimates of what constitutes a fair settlement figure are tempered by factors such as the
27 risk of losing at trial, the expense of litigating the case, and the expected delay in recovery
28 (often measured in years).

In re Anthem Data Breach Litig., 227 F.R.D. 299, 322 (N.D. Cal. 2018.)

In similar circumstances courts have found that settlements involving even smaller class sizes
and many more objections than those at issue here constitute a strong endorsement of the proposed
terms, including the noticed attorney fees. As discussed by the court in *In re Heritage Bond Litig.*:

[T]he Court finds that the number of persons who have manifested any objection to
the request for attorneys' fees-either by opting out of the class or filing an objection

1 with this Court-is remarkably small given the wide dissemination of notice.
2 Accordingly, the Court concludes that the lack of significant objections to the
3 requested fees justifies an award of one-third of the Settlement Fund.
4 *In re Heritage Bond Litig.*, No. 02-ML-1475-DT(RCX), 2005 WL 1594389, at *16 (C.D. Cal. June
5 10, 2005) (Recognizing one objection out of a class of approx. 67,000 strongly supported the
6 requested 1/3 attorney fee award); See also, *Churchill Village LLC v. Gen. Elec.*, 361 F.3d 566, 577
(9th Cir.2004) (affirming settlement with 45 objections out of 90,000 notices sent).

7 **C. THE COURT SHOULD FINALLY APPROVE THE REQUESTED**
8 **ATTORNEYS' FEES**

9 **1. As the Prevailing Parties in Settlement Plaintiffs and the Settlement**
10 **Class are Entitled to Recover Their Attorney Fees from the Settlement**
11 **Fund Per the Terms of the Settlement Agreement**

12 Plaintiffs and the Settlement Class, as the prevailing party in settlement, are entitled to recover
13 their attorneys' fees and costs for their claims, and the associated interest and penalties. See Lab. Code §§
14 218.5, 226(e), 1194 (a), C.C.P. § 1021.5 (a). A fee award is justified where the legal action has produced
15 its benefits by way of a voluntary settlement. See, e.g., *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-
16 1291; *Westside Cmty. For Indep. Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 352-353.³

17 Here, the Settlement provides that Class Counsel may seek a fee award of up to one-third of the
18 GFV (i.e., \$3,333,333) from the GFV. (Settlement, ¶ I C.) Accordingly, the amount of Class Counsel's
19 fee request is authorized under the Settlement.

20 **2. The Reasonableness of Class Counsel's Requested Fee Award of One-**
21 **Third of the Settlement Fund is Supported by the Relevant Case Law**
22 **and by the Experience of Class Counsel**

23 When determining an attorneys' fee award, "the primary basis of the fee award remains the
24 percentage method..." *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1050. Moreover,
25 "[e]mpirical studies have shown that, regardless whether the percentage method or the lodestar method is
26 used, fee awards in class actions average around one-third of the recovery." See *Chavez v. Netflix, Inc.*
(2008) 162 Cal.App.4th 43, 66, fn.11. This is also consistent with Class Counsel's experience in class
27 action matters, in that Class Counsel is routinely awarded fees amounting to one-third of the settlement
28 fund. (Setareh Decl., ¶ 42.)

³ Class Counsel in this case entered into a fee sharing agreement which is attached to the Declaration of Shaun Setareh as Exhibit C.

1 Indeed, it is an accepted practice in class action settlements to award attorneys' fees to Class
2 Counsel based on a percentage of the total settlement value agreed upon by the parties. California courts
3 have long recognized that an appropriate method for awarding attorneys' fees in class actions is to award
4 a percentage of the fund. *Serrano v. Priest (Serrano III)* (1977) 20 Cal.3d 25, 48-49 ("when a number of
5 persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the
6 benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded
7 attorney's fees out of the fund").

8 Further, California courts regularly approve attorneys' fees equaling one-third of the common
9 fund or higher. *See, e.g., Chavez v. Netflix, Inc., supra*, 162 Cal.App.4th at 66, n.11; *Weber v. Einstein*
10 *Noah Restaurant Group, Inc.*, No. 37-2008-00077680 (San Diego Super. Ct.) (40% award); *Chalmers v.*
11 *Elecs. Boutique*, No. BC306571 (L.A. Super. Ct.) (33% award); *Boncore v. Four Points Hotel ITT*
12 *Sheraton*, No. GIC807456 (San Diego Super. Ct.) (33% award); *Vivens, et al. v. Wackenhut Corp.*, No.
13 BC290071 (L.A. Super. Ct.) (31% award); *Crandall v. U-Haul Intl., Inc.*, No. BC178775 (L.A. Super.
14 Ct.) (40% award); *Albrecht v. Rite Aid Corp.*, No. 729219 (San Diego Super. Ct.) (35% award);
15 *Marroquin v. Bed Bath & Beyond*, No. RG04145918 (Alameda Super. Ct.) (33% award).

16 Accordingly, based upon the relevant case law, Class Counsel's own experience in other class
17 actions, and similar results in California courts, Class Counsel's request for a fee award equal to one-third
18 of the GFV is fair, adequate, and reasonable.

19 3. The Lodestar Crosscheck Supports Approval

20 The lodestar crosscheck "provides a mechanism for bringing an objective measure of the work
21 performed into the calculation of a reasonable attorney fee." *Laffitte v. Robert Half Int'l Inc.*, 376
22 P.3d 672, 676 (Cal. 2016). Only when the lodestar multiplier is "far outside the normal range" would
23 the trial court "have reason to reexamine its choice of a percentage." *Id.* "[T]rial courts conducting
24 lodestar cross-checks have generally not been required to closely scrutinize each claimed attorney-
25 hour, but have instead used information on attorney time spent to focus on the general question of
26 whether the fee award appropriately reflects the degree of time and effort expended by the attorneys."
27 *Id.* (internal quotations omitted).

28 A lodestar crosscheck here confirms that the requested award is reasonable. Class Counsel

1 has already logged a total of 1,196.85 hours in billable time at their current standard hourly rates,
2 resulting in a total lodestar of \$966,138. (Setareh Decl., ¶¶ 45-46; Grombacher Decl. ¶ 48; Stoops Decl.
3 ¶¶ 40-41; Declaration of William Restis (“Restis Decl.”) ¶ 7.) Setareh Law Group has expended 532.85
4 attorney hours on this matter and has a lodestar of \$480,534. (Setareh Decl., ¶¶ 45-46.)
5 Bradley/Grombacher, LLP has expended 229.8 hours on this matter and has a lodestar of \$194,552.50.
6 (Grombacher Decl. ¶ 48.) Sommers Schwartz, P.C. has expended 389.1 hours on this matter and has a
7 lodestar of \$253,240. (Stoops Decl. ¶¶ 40-41.) The Restis Law Firm, P.C. has expended 45.1 hours on
8 this matter and has a lodestar of \$37,811. (Restis Decl. ¶ 7.)

9 The lodestar multiplier here of 3.45 falls within the “typical” range accepted by courts
10 supports awarding the requested attorney fees under a lodestar cross check. The hours billed represent
11 time spent on tasks that were essential to litigation and settlement. The standard hourly rates for Class
12 Counsel – ranging from \$250 to \$1,150 for attorneys – are reasonable. Class Counsel’s rates are in
13 line with those charged by experienced class action lawyers who practice on a national scale and
14 within the range of those approved by other courts in similar circumstances. *See, e.g., Spano v. Boeing*
15 *Co.*, No. 06-CV-743-NJR-DGW, 2016 WL 3791123, at *3 (S.D. Ill. Mar. 31, 2016) (approving hourly
16 rates of \$460 to \$998 for attorneys, \$309 for paralegals, and \$190 for legal assistants); *Laffey Matrix*
17 <http://www.laffeymatrix.com/see.html> (last visited August 27, 2024) (setting forth rates between \$437
18 to \$1057 for attorneys of similar experience levels).

19 California courts generally approve multipliers between 2 and 4. *Wershba v. Apple Computer,*
20 *Inc.*, 110 Cal. Rptr. 2d 145, 170 (Ct. App. 2001) (“Multipliers can range from 2 to 4 or even higher”);
21 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002) (upholding multiplier of 3.65).
22 Here the lodestar crosscheck supports Class Counsel’s requested fee.

23 The lodestar cross-check calculation need not entail neither mathematical precision nor bean-
24 counting. *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 306 (C.A.3 (Pa.), 2005)

25 The Ninth Circuit has similarly recognized that the lodestar method “creates incentives for
26 counsel to spend more hours than may be necessary on litigating a case so as to recover a reasonable
27 fee, since the lodestar method does not reward early settlement.” *Vizcaino v. Microsoft Corp.*, 290
28 F.3d 1043, 1050, n.5 (9th Cir. 2002). As a corollary, a defendant willing to recognize a potential

1 error and settle at an early stage would face the increased risk that an early settlement overture would
2 be rejected. That did not happen here, in part because a percentage of the fund award encourages
3 efficient litigation. The Ninth Circuit has thus cautioned that, while a lodestar method can be used as
4 a cross check on the reasonableness of fees based on a percentage of recovery method if a district
5 court in its discretion chooses to do so, a lodestar calculation is not required and it did “not mean to
6 imply that class counsel should necessarily receive a lesser fee for settling a case quickly.” *Id.*

7 The percentage of recovery method “rests on the presumption that persons who obtain
8 benefits of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant’s
9 expense.” *Staton*, 327 F.3d 938, 967 (9th Cir. 2003). This rule, known as the “common fund
10 doctrine,” is designed to prevent unjust enrichment by distributing the costs of litigation among those
11 who benefit from the efforts of others. *Paul, et al. v. Grauly*, 886 F.2d 268, 271 (9th Cir. 1989).

12 It is only fair that every class member who benefits from the opportunity to claim a share of
13 the settlement pay his or her pro rata share of attorney’s fees, and Plaintiffs’ request for fees here
14 means that Class Counsel seek an amount of fees less than the amount Class Counsel would likely
15 receive if they represented each class member individually. Typical contingent fee contracts of
16 plaintiffs’ counsel provide for attorney’s fees of about 40% of any recovery obtained for a client. It
17 would be unfair to compensate Class Counsel here at a substantially lesser rate because they obtained
18 relief for hundreds of class members. To the contrary, equitable considerations dictate that Class
19 Counsel be rewarded for achieving a settlement that confers benefits among so many people,
20 especially without protracted litigation. The result achieved by Class Counsel merits an award of
21 attorney’s fees equal to one-third of the total recovered value in this case.

22 **D. THE RESULTS ACHIEVED ESPECIALLY WHEN WEIGHED AGAINST THE**
23 **MAGNITUDE OF THE CONTINGENT RISKS IN THIS CASE ALSO**
24 **SUPPORT THE FEE REQUEST**

25 Class Counsel obtained a substantial recovery for the Settlement Class in a case fraught with risk.
26 As discussed above and in the Motion for Preliminary Approval previously filed with this Court, this case
27 was fraught with risk both on the merits and with regard to class certification.

28 Indeed, the issues here are a developing area of case law with conflicting authorities (and ever-
increasing uncertainty) with respect to merits issues, and recent class action practice has shown that
obtaining class certification is often quite difficult. In addition, even where class certification is granted,

1 a plaintiff still needs to prevail on the underlying wage and hour claim and overcome the employer's
2 defenses and possible dispositive motion(s).

3 Further, Class Counsel should be compensated for undertaking these risks on a pure contingency
4 basis. (Setareh Decl., ¶ 44; Grombacher Decl., ¶ 44; Stoops Decl., ¶ 44.) Class Counsel have borne all the
5 costs of litigation without receiving any compensation to date. During this time, they have expended
6 \$71,663.88 in costs, and devoted substantial time to this litigation. (Setareh Decl., ¶¶ 40-41, 43-46; Restis
7 Decl. pages 3-4; Stoops Decl. ¶¶ 40-41, 50; Grombacher Decl., ¶¶ 44, 48. Their efforts have included,
8 among other things: conducting the initial investigation of the case and developing the facts and theories
9 regarding wage and hour claims, filing of the complaints, conducting formal and informal discovery,
10 reviewing documents obtained in discovery, filing and briefing motions to compel discovery responses,
11 filing amended complaints, conducting a review of the record and preparing a thorough mediation brief
12 and damages analysis in preparation for mediation, preparing for and attending mediation, attending
13 hearings, engaging in contentious arm's-length negotiation at the mediation, and working with Defendant
14 to prepare the Settlement Agreement, related forms, supplemental briefing and approval motions. (Setareh
15 Decl., ¶ 43; Grombacher Decl. ¶¶ 14-15; 48; Stoops Decl. ¶¶ 12-31, 40; Restis Decl. ¶ 5.)

16 Given the considerable potential for adverse outcomes in this case (as discussed above and in the
17 Motion for Preliminary Approval), the contingent risk was great. This litigation also took a considerable
18 amount of time and effort that Class Counsel could have spent on other cases. (Setareh Decl., ¶ 44).

19 **1. Class Counsel's Experience in Wage and Hour Litigation Further**
20 **Supports the Fee Request**

21 Class Counsel's previous experience in litigating wage and hour class actions also supports the
22 reasonableness of the fee request. (Setareh Decl., ¶¶ 5-6; Grombacher Decl. ¶¶ 3-10; Stoops Decl. ¶¶ 2-7;
23 Restis Decl. ¶¶ 2-3.) Class Counsel's experience in similar matters was integral in evaluating the strengths
24 and weaknesses of the case against Defendant and the reasonableness of the Settlement. (Setareh Decl., ¶
25 7.) Practice in the narrow field of wage and hour litigation requires particular attention to nuances
26 concerning ever-evolving procedural and substantive issues. This is especially so given recent changes in
27 the legal landscape surrounding class certification. Indeed, both the U.S. Supreme Court and the California
28 Supreme Court have recently been less receptive to class certification in employment cases, and wage-
and-hour cases in particular. *See, e.g., Duran v. U.S. Bank* (2014) 59 Cal.4th 1. Because it is reasonable

1 to compensate Class Counsel commensurate with their skill, reputation, and experience, the requested fee
2 award warrants this Court's final approval.

3 **E. THE LOW PERCENTAGE OF OBJECTIONS AND REQUESTS FOR**
4 **EXCLUSION ALSO SUPPORT THE FEE REQUEST**

5 The low number of objections and requests for exclusion from the Settlement also demonstrates
6 the fairness and reasonableness of the fee request. *See Garner v. State Farm Mut. Auto Ins. Co.* (N.D. Cal.
7 2010) 2010 U.S. Dist. LEXIS 49482, at *5 ("a single objection out of a sizeable class, after notice, further
8 demonstrates the reasonableness and fairness of Class Counsels' request").

9 Here, notices of the Settlement were mailed to all 101,631 Class Members. (Bench Decl., ¶ 8.)
10 The notices informed Class Members that Class Counsel would apply for attorneys' fees of up to
11 \$3,333,333 (one-third of the GFV) and reimbursement of up to \$150,000 in costs, and Class Members
12 were advised of their right to object to such requests. Following notice to the 101,631 Settlement Class
13 members, there are only 5 objections and 128 requests for exclusion. (Bench Decl. ¶¶ 12-13). Only .12%
14 of individuals chose to request exclusion. Only .004% of individuals filed an objection. Thus, the low
15 number of objections and requests for exclusion speak to the fairness of the requested fee award.

16 **F. THE REQUESTED AWARD OF COSTS SHOULD BE APPROVED.**

17 Plaintiffs' request for litigation costs of \$71,663.88 is also fair and reasonable. Attorney costs up
18 to \$150,000 are allowed under the Settlement Agreement. (Settlement, ¶ I C.) As the evidence submitted
19 herewith shows, costs of \$71,663.88 are documented and reasonably incurred. Costs of \$53,514.36 were
20 incurred by Setareh Law Group in this litigation, including filing fees, a share of the mediation fees and
21 the \$45,266 incurred for the damages expert. (Setareh Decl., ¶ 40, Exh. B). The Restis Law Firm incurred
22 costs of \$294.74. Restis Decl. pages 3-4. Sommers Schwartz, P.C. incurred costs of \$8,066.60. Stoops
23 Decl. ¶ 50. Bradley Grombacher, LLP incurred costs of \$9,788.18. Grombacher Decl., ¶ 44. This results
24 in total incurred costs of \$71,663.88. Thus, Plaintiffs reasonably request reimbursement of \$71,663.88.
25 Plaintiffs' request for litigation costs should be granted.

26 Indeed, the expenditure of costs by Class Counsel conferred a significant benefit to the Class, in
27 that Class Counsel completely financed this risky litigation. Among other costs, Class Counsel fronted
28 thousands of dollars in filing fees, mediator's fees, expert fees and other expenses. Each of these
expenditures increased the value of the case significantly, since without expending these costs, the case

1 could not have moved forward to a favorable resolution.

2 **G. THE REQUESTED AWARD OF ADMINISTRATIVE COSTS TO ILYM**
3 **SHOULD BE APPROVED.**

4 The request for \$170,000 in administration costs to the Settlement Administrator, ILYM, is also
5 fair and reasonable. (Bench Decl., ¶ 19; Setareh Decl. ¶ 53.) The administration costs benefit the Class
6 in a very significant way. Without administration of the Settlement, Class Members could not be paid
7 their share of the Settlement. They also would not receive proper notice of the Settlement or of their
8 ability to opt out of or object to the Settlement.

8 **H. PLAINTIFFS' REQUESTED SERVICE AWARDS SHOULD BE APPROVED**
9 **AS FAIR, REASONABLE AND ADEQUATE.**

10 In evaluating a service payment, the court may consider “(1) the risk, both financial and otherwise,
11 the class representative faced in bringing the suit; (2) the notoriety and personal difficulties encountered
12 by the class representative; (3) the amount of time and effort spent by the class representative; (4) the
13 duration of the litigation; and (5) the personal benefit received by the class representative as a result of the
14 litigation.” *Golba v. Dick's Sporting Goods, Inc.* (Cal.App. 4 Dist., 2015) 190 Cal.Rptr.3d 337, 352.

15 Courts routinely approve incentive awards to compensate named plaintiffs for the services they
16 provide and the risks they incur during class action litigation, often in much higher amounts than that
17 sought here. *See, e.g., Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726.

18 The Settlement Agreement provides for enhancement awards of \$7,500 to each named Plaintiff.
19 (Agreement I H.) Plaintiffs contributed significantly to the prosecution and ultimate success of this
20 litigation. The requested service award of \$7,500 each to Plaintiffs Tonya Halfhill, Danyell Sanders, Mario
21 Moreno and Susie Drennan is warranted. Plaintiffs spent considerable time speaking with their counsel,
22 gathering documents, participating in discussions regarding settlement, and reviewing the Settlement.
23 Plaintiffs also took on the risk of facing intrusive discovery, facing a potential costs award, and the risk
24 that being involved in litigation would be viewed unfavorably by potential employers. (Declaration of
25 Tonya Halfhill ¶¶ 8-16; Declaration of Danyell Sanders ¶¶ 7-10; Declaration of Mario Moreno ¶¶ 7-10;
26 Declaration of Susie Drennan ¶¶ 7-10; Setareh Decl. ¶¶ 51-52).

26 **VI. CONCLUSION**

27 The motion for final approval should be granted.

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DATED: August 30, 2024,

SETAREH LAW GROUP

/s/ Farrah Grant
SHAUN SETAREH
THOMAS SEGAL
FARRAH GRANT
Attorneys for Plaintiff
DANYELL SANDERS



Superior Court of Alameda County Public Portal

Court Reservation Receipt

Reservation			
Reservation ID: 956334734935		Status: RESERVED	
Reservation Type: Motion re: (Final Approval)		Number of Motions: 1	
Case Number: RG21096610		Case Title: Halfhill VS Kaiser Permanente Insurance Company	
Filing Party: Tonya Halfhill (Plaintiff)		Location: Rene C. Davidson Courthouse - Department 21	
Date/Time: September 24th 2024, 1:30PM		Confirmation Code: CR-YYUMBWYTWBE8YNTZJ	
Fees			
Description	Fee	Qty	Amount
Motion re: (name extension)	.00	1	.00
Court Technology Fee	1.00	1	1.00
TOTAL			\$1.00
Payment			
Amount: \$1.00		Type: Visa	
Account Number: XXXX5435		Authorization: 04524A	

Payment Date:
2024-04-18

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