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

PAULA DONALD, on behalf of herself, all  
others similarly situated, and the general  
public,

Plaintiff,

vs.

XANITOS, INC., a Delaware corporation,  
KAISER FOUNDATION HOSPITALS, a  
California corporation, and DOES 1 through  
10, inclusive,

Defendant.

CASE NO.: 3:14-CV-05416-WHO

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT AND  
MOTION FOR ATTORNEYS' FEES,  
COSTS, AND REPRESENTATIVE  
PLAINTIFF ENHANCEMENT**

Date: April 26, 2017  
Time: 2:00 p.m.  
Judge: Hon. William H. Orrick  
Courtroom: 2 – 17th Floor

1 Pending before the Court are Plaintiff Paula Donald's ("Plaintiff") Motion for Final  
2 Approval of Class Action Settlement and Plaintiff's Motion for Attorneys' Fees, Costs, and  
3 Representative Plaintiff Enhancement.

4 Plaintiff's Motion for Final Approval requests an order (1) granting final approval to the  
5 settlement of claims as set forth in the Stipulation and Agreement to Settle Putative Class Action  
6 ("Agreement" or "Settlement") between the parties in the above-captioned matter; (2) granting  
7 approval of payment to the claims administrator; and (3) dismissing this action with prejudice in  
8 accordance with the terms of the Agreement.

9 Plaintiff's Motion for Attorneys' Fees, Costs and Plaintiff Representative Enhancement  
10 requests an order (1) awarding \$150,000 in attorney's fees, (2) an enhancement award of \$2,500  
11 to Representative Plaintiff Paula Donald, and (3) reimbursement of litigation costs of \$9,500.

12 The Court conducted a hearing regarding the Motion for Final Approval on April 26,  
13 2017, concurrent with the hearing on Plaintiff's Motion for Attorney's Fees, Costs, and  
14 Representative Plaintiff Enhancement.

15 On December 9, 2016, the Court entered an order preliminarily approving the Settlement.  
16 The Court certified the following classes:

17 (1) All persons who provided environmental services to Defendants within the  
18 State of California as a contractor for Xanitos, and who Xanitos classified as an  
independent contractor; and

19 (2) All persons who provided environmental services to Defendants within the  
20 State of California as a supervisor, manager or similar or equivalent designation,  
as an employee of Xanitos, and who Xanitos classified as an exempt employee.

21 (Dkt. 73 ("Order Granting Preliminary Approval")).

22 For the reasons stated below and at the hearing, the Court GRANTS Plaintiff's Motion  
23 for Final Approval of Class Action Settlement and GRANTS Plaintiff's Motion for Attorneys'  
24 Fees, Costs, and Representative Plaintiff Enhancement.

25 **STANDARD FOR APPROVAL OF CLASS ACTION SETTLEMENT**

26 To approve a proposed settlement of a class action under Federal Rule of Civil  
27 Procedure 23(e), the Court must find that the proposed settlement is "fair, adequate and  
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1 reasonable,” recognizing that “it is the settlement taken as a whole, rather than the individual  
2 component parts, that must be examined for overall fairness.” *Staton v. Boeing Co.*, 327 F.3d  
3 938, 960 (9th Cir. 2003) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.  
4 1998)).

5 **STANDARD FOR MOTION FOR ATTORNEYS’ FEES, COSTS AND**  
6 **REPRESENTATIVE PLAINTIFF ENHANCEMENT**

7 At the conclusion of a successful class action, class counsel may apply to the Court for an  
8 award of reasonable attorneys’ fees. *See* Fed. R. Civ. P. 23(h). Where a settlement produces a  
9 common fund for the benefit of the entire class, courts have discretion to employ either the  
10 lodestar method or the percentage-of-recovery method. *See In re Mercury Interactive Corp.*, 618  
11 F.3d 988, 992 (9th Cir. 2010) (citing *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000)).  
12 Each of these methods may be used to cross-check the other.

13 Class Counsel is typically entitled to reimbursement of all reasonable out-of-pocket  
14 expenses and costs in prosecution of the claims and in obtaining a settlement. *See Vincent v.*  
15 *Hughes Air West*, 557 F.2d 759, 769 (9th Cir. 1977).

16 “Incentive awards are fairly typical in class action cases . . . Such awards are  
17 discretionary and are intended to compensate class representatives for work done on behalf of the  
18 class . . .” *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (citing 4 *William*  
19 *B. Rubenstein et al., Newberg on Class Actions* § 11:38 (4th ed. 2008)). These payments work  
20 both as an inducement to participate in the suit and as compensation for time spent in litigation  
21 activities. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 463 (describing the service award  
22 as an incentive to the class representatives); *Matter of Continental Illinois Securities Litig.*, 962  
23 F.2d 566, 571 (7th Cir. 1992) (stating that an enhancement award should be in such an amount  
24 “as may be necessary to induce [the class representative] to participate in the suit”).

25 **MOTION FOR FINAL APPROVAL**

26 For good cause shown, and as more fully explained below, the Motion for Final Approval  
27 is GRANTED. The Court ORDERS as follows:

1           1.       The presumption of fairness applies here. As discussed above, Plaintiff obtained  
2 sufficient information permitting her to assess the strengths and value of the case before  
3 engaging in settlement negotiations. The Settlement was negotiated by capable counsel, using an  
4 experienced mediator. In light of these facts, the Settlement is presumptively fair, and, as  
5 explained below, all relevant factors support final approval.

6           2.       Final Certification of the Settlement Classes. The Settlement Classes are  
7 comprised of the following individuals from November 6, 2010 until December 9, 2016:

8           (1) All persons who provided environmental services to Defendants within the  
9 State of California as a contractor for Xanitos, and who Xanitos classified as an  
independent contractor; and

10          (2) All persons who provided environmental services to Defendants within the  
11 State of California as a supervisor, manager or similar or equivalent designation,  
as an employee of Xanitos, and who Xanitos classified as an exempt employee.

12           The Court finds that the Settlement Classes, as defined in the Agreement, meet the  
13 requirements of Rule 23(a) and Rule 23(b)(3) of the Federal Rules of Civil Procedure.

14           Accordingly, for the purposes of settlement, the Court certifies the Settlement Classes.

15          3.       For purposes of settlement, the Court appoints Plaintiff Paula Donald as a Class  
16 Representative for the both Classes.

17          4.       For purposes of settlement, the Court appoints Leonard T. Emma, Michael R.  
18 Hoffman, and Stephen Noel Ilg of the law firm of Hoffman Employment Lawyers as Class  
19 Counsel for the Settlement Class.

20          5.       The Court approves the Agreement and finds that it is a reasonable compromise  
21 of the claims of Plaintiff and the Settlement Classes, reached by the Parties after extensive  
22 discovery and intensive arms-length negotiations with the assistance of experienced counsel.  
23 The Agreement is fair, just, reasonable and adequate to, and in the best interest of, the Settlement  
24 Classes. It achieves a definite and certain result for the benefit of the Settlement Classes that is  
25 preferable to continuing litigation in which the Settlement Class would necessarily confront  
26 substantial risk, uncertainty, delay, and cost. The Court also finds that the settlement terms  
27 negotiated by the Parties and described in their Agreement are a fair and reasonable resolution of  
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1 a bona fide dispute between the Plaintiff, Class Members, and the Defendants.

2 6. This Order constitutes final approval of the Agreement. The Agreement is  
3 binding on the parties to it and on all members of the Settlement Classes in accordance with the  
4 terms of the Agreement, excepting only to the one individual, Mr. Jesus Valencia, who  
5 effectively excluded himself from the Settlement Class in accordance with the terms of the  
6 Agreement..

7 7. The Court determines that the Notice was given as required by the Preliminary  
8 Approval Order. The Court finds that the Notice procedure employed was the best practical  
9 notice under the circumstances and provided all members of the Settlement Classes with fair and  
10 adequate notice of the terms of the settlement, the Fairness Hearing, and the opportunity to  
11 object to the settlement and/or exclude themselves from the settlement. The Court finds the  
12 Notice satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure.

13 8. Attorneys' Fees and Litigation Expenses. As discussed in greater detail below,  
14 the Court approves Class Counsel's requested fees award of \$150,000. The Court finds this fee  
15 award is justified. As discussed below, the Court finds that the reimbursement of costs requested  
16 in Plaintiff's unopposed motion is reasonable and that Class Counsel shall be awarded the  
17 requested amount of \$9,500 for litigation expenses actually incurred in the prosecution of this  
18 litigation. In addition, the Settlement Administrator shall be awarded up to \$15,000 for its  
19 reasonable fees and expenses incurred in the administration of the settlement.

20 9. As discussed in greater detail below, the \$2,500 Enhancement Payment to the  
21 Representative Plaintiff set forth in the Agreement is approved for her substantial services for the  
22 benefit of the Settlement Classes.

23 10. Administering the Settlement of Claims. The Parties and the Settlement  
24 Administrator shall continue to administer the Settlement as set forth in the Agreement.

25 11. As of the date this judgment becomes final (meaning that the time for appeal has  
26 expired with no appeal taken, all appeals are resolved and none are left pending, or this judgment  
27 is affirmed in all material respects after completion of the appellate process), the Representative  
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1 Plaintiff and Settlement Class Members, are forever barred from bringing or presenting any  
2 action or proceeding against any Released Party that involves or asserts any of the Released  
3 Claims (as those terms are defined in the Agreement).

4 12. All claims in this action are hereby **DISMISSED WITH PREJUDICE** and, except  
5 as provided herein, without costs against Defendants.

6 13. Without affecting the finality of this judgment, the Court reserves jurisdiction  
7 over the implementation, administration, and enforcement of this judgment and the Agreement  
8 and all matters ancillary to the same.

9 14. This Order and the Agreement are not evidence of, or an admission or concession  
10 on the part of, the Released Parties with respect to any claim of any fault, liability, wrongdoing,  
11 or damages whatsoever.

12 15. The findings and rulings in this Order are made for the purposes of settlement  
13 only and may not be cited or otherwise used to support the certification of any contested class or  
14 subclass in any other action.

15 16. Neither the Agreement nor any ancillary documents, actions, statements, or filings  
16 in furtherance of settlement (including matters associated with the mediation) will be admissible  
17 or offered into evidence in any action related or similar to this one for the purposes of  
18 establishing, supporting or defending against any claims that were raised or could have been  
19 raised in this action or are similar to such claims.

20 **MOTION FOR ATTORNEYS' FEES, COSTS AND REPRESENTATIVE PLAINTIFF**  
21 **ENHANCEMENT AWARD**

22 For good cause shown, and as more fully explained below, the Motion for Attorneys'  
23 Fees, Costs and Representative Plaintiff Enhancement is **GRANTED**. The Court **ORDERS** as  
24 follows:

25 17. Under both the lodestar and percentage-of-recovery methods, Plaintiff's request  
26 for \$150,000 in attorneys' fees is reasonable and should be approved.

27 18. The Court first considers the lodestar method. The lodestar figure is calculated by  
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1 multiplying the number of hours reasonably expended on the litigation by a reasonable hourly  
2 rate for the region and for the experience of the lawyer. *See Staton v. Boeing Co.*, 327 F.3d 938,  
3 965 (9th Cir. 2003). Though the lodestar figure is “presumptively reasonable,” *Cunningham v.*  
4 *Cnty. of Los Angeles*, 879 F.2d 481, 488 (9th Cir. 1988), the court may adjust it upward or  
5 downward by an appropriate positive or negative multiplier reflecting a host of “reasonableness”  
6 factors, “including the quality of representation, the benefit obtained for the class, the complexity  
7 and novelty of the issues presented, and the risk of nonpayment,” *Hanlon v. Chrysler Corp.*, 150  
8 F.3d 1011, 1029 (citing *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975)).  
9 Here, Class Counsel calculated total lodestar fees of \$170,247.50 based on approximately 375  
10 total attorney hours worked. The Court finds that the number of hours devoted to this case was  
11 reasonable and that the billing rates used by Class Counsel are reasonable and in line with  
12 prevailing rates in this district. The Court also finds that a positive multiplier could be applied to  
13 this case in light of the quality and effectiveness of representation, the benefit obtained for the  
14 class, the complexity and novelty of the issues presented, and the risk of nonpayment, among  
15 other factors. However, this is unnecessary because Class Counsel’s lodestar total exceeds  
16 Plaintiff’s request for attorneys’ fees.

17 19. The propriety of the requested fee award is confirmed by a cross-check based on  
18 the percentage of the gross settlement amount obtained. The requested fee represents 30% of the  
19 value of the settlement, which the Court finds appropriate in light of the results obtained, the  
20 novelty and difficulty of the questions involved, the skill required to litigate the case to trial, the  
21 preclusion of other employment, and the contingent nature of the fee. The Court finds that the  
22 requested fee award is reasonable and therefore GRANTS the request.

23 20. Class Counsel provided an itemized list of the costs incurred during this litigation,  
24 separated by category. The Court has reviewed the submitted records and finds the requested  
25 costs award of \$9,500 to be reasonable. The Court therefore GRANTS the request for costs.

26 21. The sole Representative Plaintiff seeks an enhancement awards of \$2,500 for her  
27 service in this matter. The Court has reviewed the declaration submitted by the Representative  
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1 Plaintiff in support of the requested enhancement award and the Court finds that the requested  
2 amount is fair and reasonable. The Class Representative helped Class Counsel investigate  
3 claims, connected Class Counsel with putative class members, sat for a deposition, monitored  
4 case status and progress, and participated in mediation, among other things. The Class  
5 Representative expended many hours on the case and subjected herself to public attention and  
6 reputational risk. Plaintiff has also provided Defendants with a general release of claims. In  
7 light of these facts, the Court GRANTS the Representative Plaintiff's request for an  
8 enhancement award of \$2,500.

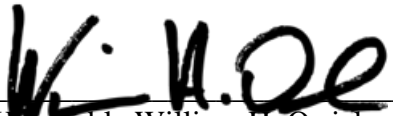
9 **CONCLUSION**

10 For the foregoing reasons, the Court orders as follows:

- 11 1. The Court grants final approval of the proposed Class Action Settlement,  
12 approving the release set forth therein;
- 13 2. The Court awards Class Counsel \$150,000 in attorneys' fees;
- 14 3. The Court awards Class Counsel \$9,500 in costs; and
- 15 4. The Court awards an enhancement award to Class Representative Paula Donald in  
16 the amount of \$2,500.

17 Accordingly, the Settlement Administrator is hereby ordered to disburse funds to Class Counsel  
18 for attorneys' fees in the amount of \$150,000.00 and costs in the amount of \$9,500. The  
19 Settlement Administrator is further ordered to disburse \$2,500 to Representative Plaintiff Paula  
20 Donald and to disburse settlement funds to Class Members in accordance with the terms of the  
21 Agreement.

22  
23 Dated: April 27, 2017

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26 \_\_\_\_\_  
27 Honorable William H. Orrick  
28 United States District Court Judge