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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JIMMIE JARRELL, an individual, on behalf of himself and all others similarly situated,

Plaintiff,

vs.

AMERIGAS PROPANE, Inc.; a Pennsylvania corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 3:16-cv-01481-JST

CLASS ACTION

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR AN AWARD OF (1) ATTORNEY'S FEES TO CLASS COUNSEL (2) ATTORNEY'S COSTS TO CLASS COUNSEL; AND (3) ENHANCEMENT AWARD TO PLAINTIFF; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: January 11, 2018
Time: 2:00 p.m.
Courtroom: Courtroom 9 – 19th Fl.
Judge: Hon. Jon S. Tigar

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TO THE COURT, TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

Please take notice that on January 11, 2018, at 2:00 p.m., or as soon thereafter as counsel may be heard, in Courtroom 9 of the United States Courthouse, located at 450 Golden Gate Avenue, San Francisco, CA 94102, Plaintiff JIMMIE JARRELL ("Plaintiff") will and hereby does move the Court for an order awarding fees and costs to Class Counsel and an Enhancement Award to Plaintiff.

Plaintiff's motion is based on this Notice, the following Memorandum of Points and Authorities, the Declarations of Shaun Setareh and H. Scott Leviant submitted herewith, the Declaration of Plaintiff Jimmie Jarrell submitted herewith, all other pleadings and papers on file in this action, and any oral argument or other matter that may be considered by the Court.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is a putative wage and hour class action on behalf of non-exempt employees employed by AMERIGAS PROPANE, INC. ("Defendant" or "AmeriGas") who were employed by AmeriGas as Service Technicians (a non-exempt or hourly position) in California from February 16, 2012, through the date of preliminary approval (August 4, 2017). The core issues in the case were based on allegations by Named Plaintiff JIMMIE JARRELL ("Plaintiff") that on call time worked by Service Technicians was not correctly compensated, travel time was not correctly compensated, Defendant did not provide legally compliant meal periods and rest breaks, and, as a result wage statement provided were inaccurate and final wages were not timely paid. Defendant disputes these claims.

After discovery, the exchange of data informally, and mediation, Plaintiff and Defendant (Plaintiff and Defendant collectively referred to herein as the "Parties") reached a proposed class action settlement valued at $800,000 for approximately 283 putative class members, and this Court preliminarily approved that proposed settlement on August 4, 2017.

Both Parties believe the Settlement to be fair and reasonable, to adequately reflect the potential liability, and the result of a thorough factual and legal analyses and arms-length negotiations. In addition to the independent reasonableness of the settlement, it is substantially superior in value to a settlement approved by Judge Wu in *Shields v. AmeriGas Propane, Inc.*, Central District of California Case No. 15-

cv-7245-GW-PJW ("*Shields*"), a matter asserting similar wage and hour claims for relief on behalf of a proposed class of propane delivery drivers employed by AmeriGas.

Through this Motion, Plaintiff requests an award of attorney's fees and costs to Class Counsel and an enhancement award to Plaintiff. On a percentage or lodestar basis, the fee award sought by this Motion is unquestionably within the range of reasonableness. The costs requested are only those costs necessary to successfully resolve this matter. The enhancement award is fair and reasonable, given that Plaintiff, an individual struggling with serious medical issues, persevered through to the positive conclusion of this action for the benefit of others.

I. BACKGROUND

On February 16, 2016, Plaintiff filed this Litigation in the Superior Court of the State of California for the County of Alameda as a putative Rule 23 class action on behalf of himself and others allegedly similarly situated in California and a putative collective action under the federal Fair Labor Standards Act ("FLSA") on behalf of those allegedly similarly situated in California. Plaintiff filed a First Amended Complaint on March 15, 2016, in which Plaintiff alleged that AmeriGas had violated certain state and federal employment laws, including without limitation the FLSA, the California Labor Code, and the California Business and Professions Code, by reason of the following alleged conduct: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay hourly wages, (4) failure to provide accurate written wage statements, (5) failure to timely pay all final wages; (6) unfair competition; (7) civil penalties; and (8) failure to pay employees for all hours worked. (Declaration of H. Scott Leviant ["Leviant Decl."], at ¶ 4.)

On March 25, 2016, the Litigation was removed on AmeriGas' motion to the United States District Court for the Northern District of California. (Leviant Decl., at ¶ 5.)

Following the filing of the Complaint and the exchange of significant amounts of documents and information, counsel for AmeriGas and Class Counsel, both of whom are experienced in these types of cases, began a series of arms-length negotiations which led to the scheduling of a mediation session with a professional mediator, Mark Rudy. (Leviant Decl., at ¶ 6.) On January 25, 2017, the Settling Parties held an all-day mediation session with Mr. Rudy and reached the agreement that is the subject of this Motion.

(Leviant Decl., at ¶ 7.)

The Stipulation is intended to result in the creation of a settlement class comprised of all Persons who were employed by AmeriGas as a Service Technician (a non-exempt or hourly position) in California from February 16, 2012, through the date of preliminary approval. (Leviant Decl., at ¶ 8.) There approximately 231 Settlement Class Members. (*Id.*)

Solely for the purpose of settling this case, the parties stipulate and agree that the requirements for establishing class and collective action certification with respect to this class have been met and are met. (Leviant Decl., at ¶ 9.) If this Settlement is not approved by the Court for any reason, AmeriGas reserves its rights to contest class and/or collective action certification. (*Id.*) This Stipulation, if approved by the Court, will result in the termination with prejudice of the Litigation through the entry of the Judgment, and the release of all Released Claims for all Class Members. (*Id.*) The Class Representative will also execute a general release of all claims. (*Id.*)

On August 4, 2017, this Court conditionally certified a settlement class, preliminarily approved the Stipulation, approved the issuance of notice to the Class, and set a hearing for final approval of the Settlement.

II. SUMMARY OF SETTLEMENT TERMS

The full terms of the settlement are set forth in the Stipulation. The primary material terms are as follows:

(a) The Settlement Class is: all Persons who were employed by AmeriGas as a Service Technician (a non-exempt or hourly position) in California from February 16, 2012, through the date of preliminary approval (August 4, 2017). (Stipulation, ¶¶ 1.4, 1.30.)

(b) Defendant agrees that $800,000.00 represents the maximum amount that it will pay out under this Stipulation, inclusive of the following: (a) Maximum Settlement Portion for Payments to Participating Class Members; (b) the maximum gross amount for Class Counsel's attorneys' fees to be paid in accordance with the terms set forth in Paragraph 2.8.1, which is $266,640; (c)

the maximum gross amount for all of Class Counsel's and the Class Representative's taxable litigation costs and associated expenses, which is $35,000; (d) the anticipated gross amount for claims administration costs, which is $20,000; (e) the maximum gross amount for the enhancement payments to be made by AmeriGas to the Class Representative, in accordance with the terms set forth in Paragraph 2.8.2, which is a maximum $10,000; (f) the maximum gross amount for payment to the California Labor Workforce Development Agency as part of the consideration for the release of all Released Claims under the California Private Attorney Generals Act of 2004, codified at California Labor Code sections 2698 et seq., which is $30,000; and (g) Payroll Taxes. (Stipulation, ¶ 1.20.)

(c) Each current employee Class Member who does not opt out will be paid his/her share of the settlement, subject to certain taxes and withholdings, and each former employee Class Member who submits a valid claim form and does not opt out will be paid his/her share of the settlement, subject to certain taxes and withholdings. (Stipulation, ¶ 2.5.2.)

(d) Class Counsel will not seek an amount greater than $266,640 for attorneys' fees. (Stipulation, ¶ 2.8.1.)

(e) Class Counsel will not seek an amount greater than $35,000 for litigation costs. (Stipulation, ¶ 2.8.1.)

(f) The Class Representative enhancement award will be $10,000. (Stipulation, ¶ 2.8.2.)

(g) If a Class Member has not cashed his or her check within sixty (60) days of issuance, the Claims Administrator shall send the Class Member in question a postcard reminder about the deadline for cashing the check and information on how to request a replacement check. The funds associated with any checks that are not properly or timely negotiated within ninety (90) days from the date of mailing shall be deposited by the Claims Administrator into the State of

California Department of Industrial Relations Unclaimed Wages Fund with the identity of the Participating Claimants to whom the funds belong. (Stipulation, ¶ 2.6.2.)

(Leviant Decl., ¶ 10.) A true and correct copy of the JOINT STIPULATION OF CLASS ACTION SETTLEMENT is attached hereto as Exhibit "A."

III. DISCUSSION

A. The Legal Standard for Attorneys' Fee Awards

California and the Ninth Circuit, and all federal courts, for that matter, use similar criteria to assess a fee request attendant to a motion for final approval, including: (i) the results achieved on behalf of the class; (ii) class counsel's experience, reputation and ability; (iii) the time and labor required by the litigation; (iv) whether class counsel was precluded from other work; (v) the complexity of the litigation; and (vii) the contingent nature of the litigation. *See Serrano v. Priest*, 20 Cal. 3d 25, 49 (1977); *accord Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002) (identifying similar criteria); *see also* Herr, MANUAL FOR COMPLEX LITIGATION, FOURTH, § 21.71 at 524-27 (2008) (survey of federal criteria similar to California criteria).

B. The Fee Award Is Reasonable and Should Receive Final Approval

1. A Reasonable Result Was Achieved on Behalf of the Class

The benefit achieved on behalf of class members defines a primary yardstick against which any fee motion is measured. *See Serrano*, 20 Cal. 3d at 49; *accord Vizcaino*, 290 F.3d at 1048. One of the most straightforward measures of a settlement's success from the Plaintiff's perspective is the average amount available to each class member from the settlement fund. For the roughly 250 members of the class, the average gross share of the settlement is approximately $3,500. (Leviant Decl., at ¶ 15.) Given the risks identified at Preliminary Approval, this result is commendable.

How class members respond to a class action settlement is typically addressed in concert with courts' assessments of a settlement's overall benefit to class members. *See generally*, *Vizcaino*, *supra*. State and federal courts alike take the measure of a settlement's "fairness" with reference to the class members' reaction, and specifically the extent to which class members object, and through their objections

imply a settlement's unfairness. *See, e.g., 7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1152-53 (2000) (only nine objectors from a class of 5454 was an "overwhelmingly positive" fact that supported approval of the settlement); *Reynolds v. National Football League*, 584 F.2d 280 (8th Cir. 1978) (16 objectors out of 5400 strongest evidence of no dissatisfaction with settlement among class members); *American Eagle Ins. Co. v. King Resources Co.*, 556 F.2d 471, 478 (10th Cir. 1977) (only one objector "of striking significance and import"). Here, the Court will receive information about Class Member exclusion rates at the time it determines whether to finally approve the settlement. This factor cannot be fully discussed by Plaintiff at this time.

2. The Experience, Reputation, and Ability of Class Counsel

California law also recognizes the "skill and experience of attorneys" as appropriate criteria for evaluating a fee motion. *Flannery v. California Highway Patrol*, 61 Cal. App. 4th 629, 647 (1995); *accord In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491 (W.D. Pa. 2003) ("skill and efficiency of counsel" among fee motion criteria); *In re Heritage Bond Litig.*, 2005 U.S Dist. LEXIS 13555 at *64 (C.D. Cal. June 10, 2005) (Considering "the quality of Class Counsel's effort, experience and skill"). Class Counsel has had substantial experience with the causes of action here (Leviant Decl., at ¶¶ 20-25) and has regularly litigated employment law class actions. Class Counsel has specific experience with the process of certifying and resolving wage and hour class actions alleging violations of meal and rest period obligations, as well as violations of wage payment obligations associated with on-call work. (Leviant Decl., at ¶ 20.)

3. The Effort Required by the Litigation Justifies the Fee

California and federal law also look to the time and labor required in connection with the litigation and settlement of a class action for which final approval is sought. *See Serrano*, 20 Cal. 3d at 49, *accord Vizcaino*, 290 F.3d at 1048-50. Compared to the reasonable value of the claims, Class Counsel expended substantial effort to achieve the settlement result. (Leviant Decl. ¶¶ 12-19, 31.) The "time and labor" criterion weighs in favor of an award of the requested fees.

4. Class Counsel Was Precluded from Other Employment

Another of the criteria for the evaluation of a preliminarily approved fee request is whether the settled litigation resulted in Class Counsel's foregoing other employment. *Serrano*, 20 Cal. 3d at 49;

accord In re Public Serv. Co., 1992 U.S. Dist. LEXIS 16326 at *9 (S. D. Cal. July 28, 1992) (the opportunity cost of being precluded from representing other clients in other cases "weighs in favor of an award of one-third of the common fund"). Here, Class Counsel was precluded from other employment, a factor supporting the fee. (Leviant Decl., at ¶ 27.)

5. The Complexity of the Legal and Factual Issues

California law recognizes that the litigation's general complexity and "difficulty of the questions involved, and the skill in presenting them" are properly considered. *Serrano*, 30 Cal. 3d at 49, *accord Wershba v. Apple Computer*, 91 Cal. App. 4th 224, 245 (2001). Complexity of legal issues was moderate here, though the fee is so reasonable that this factor is irrelevant. (Leviant Decl., ¶ 28.)

6. Class Counsel Assumed Substantial Risk

The novelty and challenges presented by a class action, as well as the corresponding risk that the class members and class counsel will be paid no recovery or fee, is properly evaluated in connection with a fee motion. *See Serrano*, 20 Cal. 3d at 49; *accord Vizcaino*, 290 F.3d at 1050-51 (multiplier applied to lodestar cross-check reflects risk of non-recovery).

Ninth Circuit and California state courts regard circumstances in which class counsel's work is wholly contingent as a factor weighing in favor of approving a negotiated fee award that approximates market rates. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132-33 (2001). A core theory of this matter – on-call wage obligations – presented substantial risk for Class Counsel if the on-call time was not found to create additional wage payment liability. Class Counsel nevertheless faced that risk and an reasonable result was obtained. (Leviant Decl., ¶¶ 27-28.)

7. The Fee is Reasonable Under the Common Fund Doctrine

Courts in the Ninth Circuit and California generally use the "percentage method" rather than the lodestar approach when awarding attorneys' fees in a common fund settlement. *See* 7 Witkin, B.E., CALIFORNIA PROCEDURE (2007 Supp.) §§ 255-261 at 236-241 (describing prevalence of percentage method under California law); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("[A] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole"); *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1377-78 (N.D. Cal. 1989) (Patel, J.) (endorsing percentage method). *See generally*, *Serrano*, 20 Cal. 3d at

25; *accord Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998).

a) The standard fee award in class actions has, over time, resolved itself as one-third of the recovery in common fund cases.

According to a leading treatise on class actions, "No general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented." *See* Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 14.03. Attorneys' fees that are fifty percent of the fund are typically considered the upper limit, with ***thirty to forty percent commonly awarded in cases where the settlement is relatively small***. *See id*; *see also, Van Vranken v. Atlantic Richfield Company*, 901 F. Supp. 294 (N.D. Cal. 1995) (stating that most cases where 30-50 percent was awarded involved "smaller" settlement funds of under $10 million).

The proposed one-third fee award is consistent with the average fee award in class actions.[1] The Ninth Circuit has directed that, to determine what constitutes a fair and reasonable percentage of the settlement for purposes of calculating common fund attorneys' fees, the courts should use a "benchmark" percentage of 25% of the total fund. *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989); *Vizcaino v. Microsoft Corp*., 290 F.3d 1043, 1047 (9th Cir. 2002); *Six Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990). The percentage can be adjusted upwards where the risks overcome, the benefits obtained and the work necessary to achieve those results supports such an adjustment of the benchmark. In fact, while the Ninth Circuit identified twenty-five percent as a fee percentage that is presumptively reasonable, the custom and practice in class actions is to award approximately one-third of a fund as a fee award. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around ***one-third*** of the recovery.") (emphasis added). Class Members will have the opportunity to object to the proposed award of fees and costs (or any other

[1] Awards of 33 percent or more are common in court-approved class actions litigated and settled by Class Counsel and other firms across the state. (Leviant Decl., ¶ 29.)

aspect of the settlement, if they so choose).

b) Plaintiff seek one-third of the Settlement Fund in fees.

The compensation sought for Class Counsel is also fair and reasonable. Here, the Gross Settlement Fund obtained through the efforts of Class Counsel is $800,000.00. (Leviant Decl., ¶ 10.) Class Counsel has agreed to request no more than $266,640 in fees from the Settlement Fund, or one-third of the Settlement Fund. Compared to a lodestar based on contemporaneously recorded and projected hours of approximately $215,137.50, the total compensation to Class Counsel is consistent with their recorded lodestar. The multiplier necessary to reach the total requested compensation is approximately 1.24, a very low multiplier for such challenging litigation.

The fee award requested here is slightly above the Ninth Circuit's starting point of a 25 percent "benchmark." The Settlement amount available through the efforts of Plaintiffs' counsel is $800,000.00. And Plaintiff's counsel agreed to accept no more than $266,640 in fees. (Leviant Decl., ¶ 10.) But perhaps most importantly, the proposed attorneys' fees were disclosed to the Class Members in the Notice issued to Class Members. (Leviant Decl., at ¶ 34.)

8. A Lodestar Analysis Supports the Requested Fee

Despite the widely recognized limitations of the so-called "lodestar" method, California and federal courts recognize the utility of a lodestar "cross-check." *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 46 (2000). A lodestar "cross-check" analysis typically happens in three steps. *Cundiff v. Verizon California*, 167 Cal. App. 4th 718 (2008), *accord Vizcaino*, 290 F.3d at 1047. First, a trial court must determine a baseline guide or "lodestar" figure based on the time spent and reasonable hourly compensation for each attorney involved in the case. *Serrano*, at 48. Second, the court sets a reasonable hourly fee to apply to the time expended, with reference to the prevailing rates in the geographical area in which the action is pending. *Bihun v. AT&T Information System*, 13 Cal. App. 4th 976, 997 (1993) (16 years ago, affirming a $450 per hour rate for a Southern California litigation attorney). Finally, a "multiplier" of the base lodestar is set with reference to the factors described in detail in this brief. Across all jurisdictions, multipliers of up to four are frequently awarded. NEWBERG, §14.03 at 14. Often, multipliers of greater than four are warranted.

Looking at the work of attorneys for Plaintiff in this matter (and excluding paralegals), the lodestar

calculation is as follows:

Attorney	Hours	Rate	Total
Shaun Setareh	92.90	$700	$65,030.00
H. Scott Leviant	147.10	$650	$95,615.00
H. Scott Leviant (est.)	40	$650	$26,000.00
Thomas Segal	9.7	$625	$6,062.50
Farrah Grant	12	$350	$4,200.00
Alice Kim	28.2	$400	$11,280.00
Stacey Shim	27.8	$250	$6,950.00
		Total:	**$215,137.50**

(Leviant Decl., ¶ 31.) The figures for estimated ("est.") time above reflect the best estimates of Class Counsel, based on their experience and the settlement class size, for the time that will be expended by Class Counsel between the filing of this motion and the hearing of Plaintiff's Motion for Final Approval. (*Id.*) This lodestar figure is in line with the requested fee, requiring a very *small* multiplier of 1.24. (*Id.*) The multiplier needed to align the negotiated fee award with the attorney hours expended is well below the multipliers of three or more routinely approved in class actions. (*Id.*) Accordingly, the lodestar cross-check affirms that the fee award that has been preliminarily approved does in fact fall easily within the range of reasonableness. (*Id.*)

While the lodestar of Class Counsel more than justifies the fee requested, Courts have nevertheless expressed frustration with the lodestar approach for deciding fee awards, which usually involves wading through voluminous and often indecipherable time records. Commenting on the lodestar approach, Judge Marilyn Hall Patel wrote in *In re Activision Securities Litigation*, 723 F. Supp. 1373, 1375 (N.D. Cal 1989):

> This court is compelled to ask, "Is this process necessary?" Under a cost-benefit analysis, the answer would be a resounding, "No!" Not only do the Lindy Kerr-Johnson analyses consume an undue amount of court time with little resulting advantage to anyone, but in fact, it may be to the detriment of the class members. They are forced to wait until the court has done a thorough, conscientious analysis of the attorneys' fee petition. Or, class members may suffer a further diminution of their fund when a special master is retained and paid from the fund. Most important, however, is

> the effect the process has on the litigation and the timing of settlement. Where attorneys must depend on a lodestar approach, there is little incentive to arrive at an early settlement.

The Ninth Circuit has similarly recognized that the lodestar method "creates incentives for counsel to spend more hours than may be necessary on litigating a case so as to recover a reasonable fee, since the lodestar method does not reward early settlement." *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050, n.5 (9th Cir. 2002). As a corollary, a defendant willing to recognize a potential error and settle at an early stage would face the increased risk that an early settlement overture would be rejected. That did not happen here, in part because a percentage of the fund award encourages efficient litigation. The Ninth Circuit has thus cautioned that, while a lodestar method can be used as a cross check on the reasonableness of fees based on a percentage of recovery method if a district court in its discretion chooses to do so, a lodestar calculation is not required and it did "not mean to imply that class counsel should necessarily receive a lesser fee for settling a case quickly." *Id*.

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

It is only fair that every class member who benefits from the opportunity to claim a share of the settlement pay his or her pro rata share of attorney's fees, and Plaintiff's request for fees here means that Class Counsel seek an amount of fees less than the amount Class Counsel would likely receive if they represented each class member individually. Typical contingent fee contracts of plaintiffs' counsel provide for attorney's fees of about 40% of any recovery obtained for a client. (Leviant Decl., ¶ 30.) It would be unfair to compensate Class Counsel here at a substantially lesser rate because they obtained relief for hundreds of class members. To the contrary, equitable considerations dictate that Class Counsel be rewarded for achieving a settlement that confers benefits among so many people, especially without protracted litigation. The result achieved by Class Counsel merits an award of attorney's fees equal to 33.3% of the total recovered value in this case.

9. Important Public Policies Are Advanced by Awarding Reasonable Fees to Skilled Class Counsel

Wage and hours laws "concern not only the health and welfare of the workers themselves, but also the public health and general welfare." *California Grape Etc. League v. Industrial Welfare Com.*, 268 Cal. App. 2d 692, 703 (1969). California's overtime laws "are to be construed so as to promote employee protection." *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 340 (2004) (*citing Ramirez v. Yosemite Water, Inc.*, 20 Cal. 4th 785, 794 (1999)). Courts have also long acknowledged the importance of class actions as a means to prevent a failure of justice in our judicial system. *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 434-435 (2000) (citing *Daar v. Yellow Cab Co.*, 67 Cal. 2d 695, 703-704 (1967)). As a practical matter, therefore, privately initiated class actions are the primary mechanism for enforcement of California's labor code protections.

C. <u>The Cost Reimbursement Requested Is Reasonable and Should Receive Final Approval</u>

The leading California attorneys' fee cases also confirm that class action counsel are entitled to a cost reimbursement. *Serrano*, 20 Cal. 3d at 25; *Lealao*, 82 Cal. App 4th at 48. Here, Class Counsel will not seek an amount greater than $35,000 for litigation costs. At this time, the final amount of costs that will be requested is unknown, but costs that will be requested currently total a little less than $15,000. (Leviant Decl., ¶ 32.) With travel costs for the final approval hearing, total costs that will be requested will likely be less than $16,000, which is far less that the amount allocated.

D. <u>The Enhancement Award Is Reasonable</u>

Enhancement awards serve to reward the named plaintiff for the time and effort expended on behalf of the class, and for exposing herself to the significant risks of litigation. "Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001); *In re Southern Ohio Correctional Facility*, 175 F.R.D. 270, 272 (S.D. Ohio 1997); *see also Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 300 (N.D. Cal. 1995) (approving $50,000 participation award). Here, Plaintiff's counsel requests that the Court grant Plaintiff an incentive award of $10,000. The amount of the enhancement award requested for Plaintiff is roughly three times the average recovery

for Class Members, which is proportionate given the risks undertaken by Plaintiff.

Taking the risk of filing a lawsuit against an employer deserves reward, especially in light of the settlement achieved by Plaintiff. Additionally, Plaintiff was actively involved in the litigation and settlement negotiations of this Action. Plaintiff worked diligently with counsel to prepare the action and conferred with counsel regarding settlement negotiations. (Leviant Decl., ¶ 33.) The requested amount is reasonable.

IV. CONCLUSION

This settlement is fair and reasonable, especially given the claims and the potential defenses to them and to class certification. Thus, the $800,000 settlement is worthy of final approval. And because Plaintiff's counsel were required to expend resources and take risks to obtain that result, fair compensation is also reasonable. For the reasons set forth herein, Plaintiff requests that the Court award Plaintiff's counsel $266,640 in fees, which is one-third of the gross settlement and roughly 1.25 times the actual lodestar of Plaintiff's counsel. In addition, Plaintiff requests an award of reasonable fees, estimated to be less than $16,000 when all costs are known, an amount well below the $35,000 reserved for costs. Finally, Plaintiff requests an award of $10,000 to Plaintiff Jarrell for his dedication to this case despite substantial personal challenges that would have caused many to abandon their role as a class representative.

Respectfully submitted,

Dated: August 25, 2017

SETAREH LAW GROUP

By: _____

Shaun Setareh
H. Scott Leviant

Attorneys for Plaintiff