

1 the court therefore grants plaintiffs **28 days** from the date of service of this order to file and serve
2 a supplemental memorandum in support of its motion for approval addressing the following
3 questions as well as any other matters that may aid the court in resolution of the pending motion:

- 4 1. At Docket Number 58-4, plaintiffs provided what appear to be calculations concerning the
5 value of their various claims and which were relied upon in reaching the settlement.
 - 6 a. Who generated this document and performed the calculations set forth therein?
 - 7 b. Do the numbers in columns three and four of the sheet at Docket Number 58-4
8 depict the maximum value of any unpaid overtime wages for the class member
9 indicated?
 - 10 c. Do the numbers in column three and four of the sheet at Docket Number 58-4
11 include any liquidated damages which might have been available, or do they
12 simply reflect the unpaid wages?
 - 13 d. Were the figures in columns three and four of the sheet at Docket Number 58-4
14 calculated using a two-year or three-year statute of limitations?
 - 15 e. Why was the cash-in-lieu claim discounted by 25 percent, as appears to be
16 reflected in column six of the document?
- 17 2. The motion for approval of the settlement indicates that \$25,000 of the settlement amount
18 will be allocated to officers who were underpaid overtime wages because payment
19 enhancements for their service as canine officers were not included in their base rate of
20 pay (referred to by the parties as the “canine claim”). A declaration supplied by plaintiff’s
21 counsel explains that the damages for this class were “calculated by paying a half-hour at
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23 *Zhou*, 2007 WL 2298046, at *1. “A bona fide dispute exists when there are legitimate questions
24 about the existence and extent of Defendant’s FLSA liability.” *Selk*, 159 F. Supp. 3d at 1172
25 (internal quotation marks and citation omitted). A court will not approve a settlement of an action
26 in which there is certainty that the FLSA entitles plaintiffs to the compensation they seek, because
27 it would shield employers from the full cost of complying with the statute. *Id.* Once it is
28 established that there is a bona fide dispute, courts often apply the Rule 23 factors for assessing
proposed class action settlements when evaluating the fairness of an FLSA settlement, while
recognizing that some of those factors do not apply because of the inherent differences between
class actions and FLSA actions. *Khanna v. Inter-Con Sec. Sys., Inc.*, No. CIV S-09-2214 KJM,
2013 WL 1193485, at *2 (E.D. Cal. Mar. 22, 2013).

1 the overtime rate for each day in each pay period in which the employee performed
2 canine-related duties and received canine pay, during the two years prior to January 8,
3 2017, when canine pay began to be included by the County in the base rate of pay.” (Doc.
4 No. 58-2 at ¶ 19.)

5 a. Why were the damages for the canine claim calculated in this manner?

6 b. Do the figures included at Docket Number 58-5 reflect the full amount of damages
7 calculated for the canine claim, using the above metric?

8 3. The settlement agreement calls for the award of \$150,000 in attorneys’ fees and costs, as
9 well as an additional 20% of the settlement amount allocated to the plaintiffs’ damages.

10 a. The settlement agreement indicates that \$195,000 of the settlement will be
11 allocated to the *Flores* claim and that amount will be reduced by 20% due to the
12 additional attorneys’ fees. (Doc. No. 58-3 at ¶¶ 1(a)–(b).) Twenty percent of
13 \$195,000 is \$39,000. The settlement agreement also indicates that \$25,000 of the
14 settlement will be allocated to the canine claim. (*Id.*) Twenty percent of \$25,000
15 is \$5,000. Combining these two, it would seem that plaintiffs’ counsel seeks an
16 additional award of \$44,000 in attorneys’ fees from the allocated damages under
17 the settlement agreement. However, other documents provided by counsel
18 indicate they may be seeking \$45,000 in additional attorneys’ fees to be awarded
19 from the allocated as damages. (*See* Doc. No. 58-4 at 1) (indicating the “Actual
20 Awarded Damages” for the *Flores* claim equal \$155,000). Please clarify which
21 amount of additional attorneys’ fees is sought.

22 b. The total amount of attorneys’ fees plaintiffs’ counsel seeks in this matter is
23 \$195,000, which includes \$150,000 designated as attorneys’ fees and costs by the
24 settlement agreement, plus approximately 20% of the allocated for damages under
25 the settlement agreement. (Doc. No. 58 at 20) (indicating the “cumulative total” is
26 \$195,000). A \$195,000 award of attorneys’ fees from a \$375,000 settlement
27 would mean that 52% of the total settlement fund will be paid out as attorneys’
28 fees. Explain why such an award of attorneys’ fees is reasonable, and why the

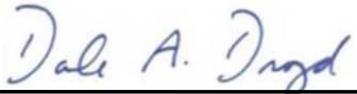
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settlement here remains fair and reasonable despite the high percentage of the total settlement to be awarded as attorneys' fees.

4. The motion for attorneys' fees indicates that \$2,500 is sought as incentive payments to be awarded to each of the named plaintiffs in this action. (Doc. No. 58 at 16.) However, no explanation regarding why incentive payments should be awarded in this case has been provided to the court. For instance, no declarations have been submitted from the named plaintiffs explaining what actions they took in forwarding this litigation have been submitted. Incentive payments such as those sought here are discretionary and must be supported by evidence. *See, e.g., Selk v. Pioneers Mem'l Healthcare Dist.*, 159 F. Supp. 3d 1164,1181 (S.D. Cal. 2016) (noting incentive payments are discretionary); *see also Goodwin v. Winn Mgmt. Grp. LLC*, No. 1:15-cv-000606-DAD-EPG, 2017 WL 3173006, at *12 (E.D. Cal. July 26, 2017); *Khanna v. Intercon Sec. Sys., Inc.*, No. 2:09-cv-2214-KJM-EFB, 2014 WL 1379861, at *10-11 (E.D. Cal. Apr. 8, 2014). Please provide evidence in support of and an explanation as to why \$2,500 incentive payments are warranted for each of the named plaintiffs in this action.

IT IS SO ORDERED.

Dated: March 6, 2018



UNITED STATES DISTRICT JUDGE