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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

BROOKE GARDNER, individually, and on
behalf of a class of others similarly situated,

Plaintiff,

vs.

GC SERVICES, LP,

Defendant.

CASE NO. 10cv0997 - IEG (CAB)

ORDER:

(1) CERTIFYING CLASS;

**(2) GRANTING FINAL
APPROVAL OF CLASS
SETTLEMENT; AND**

[Doc. No. 62]

**(3) GRANTING MOTION FOR
ATTORNEYS' FEES, COSTS, AND
SERVICE AWARD**

[Doc. No. 63]

Presently before the Court is Plaintiff Brooke Gardner (“Plaintiff”)’s unopposed motion for final approval of class settlement and Plaintiff’s motion for attorneys’ fees, costs, and service award. [Doc. Nos. 62-63.] For the reasons set forth below, the Court **GRANTS** both motions.

BACKGROUND

I. Facts

This is a wage and hour class action case. Defendant GC Services, LP (“GC Services”) provides telephone-based customer services and collections services to various companies throughout the United States. [Doc. No. 15, Answer ¶ 1.] GC Services operates three call centers in California, including one in San Diego. [Id.] GC Services’ telephone workers are generally referred to as account representatives, although their job titles vary. [Doc. No. 26-3, Deposition of

1 Sharon Webb (“Webb Depo.”) Exs. 5-9.] GC Services pays its account representatives by the
2 hour and classifies them as “non-exempt” employees who are entitled to overtime compensation.
3 [Id.; Doc. No. 1, Compl. ¶ 8.] The account representatives are typically scheduled to work at least
4 40 hours per week. [Doc. No. 26-2, Declaration of Brooke Gardner (“Gardner Decl.”) ¶ 2.]

5 Named Plaintiff Brooke Gardner previously worked as an account representative at GC
6 Services’ call center in San Diego. [Id.] Plaintiff alleges that account representatives were
7 required to perform certain “pre-shift” work on a daily basis (logging into the computer system,
8 various software programs, and the telephone system); that the account representatives were
9 uncompensated for the “pre-shift” work; and that if they failed to complete it, they were subject to
10 discipline. [Compl. ¶¶ 10-11, 15-16.] Plaintiff also alleges that account representatives were
11 required to work off the clock during meal periods and during “post-shift” periods. [Id. ¶¶ 13-16.]

12 **II. Procedural History**

13 On March 24, 2010, Plaintiff filed a putative class action against GC Services in state
14 superior court alleging causes of action for (1) failure to pay straight-time wages in violation of
15 California Labor Code § 218; (2) failure to pay overtime wages in violation of 8 C.C.R. § 11040
16 and California Labor Code §§ 510 and 1198; (3) failure to pay compensation due at termination in
17 violation of California Labor Code §§ 201-03; (4) violation of California Business and Professions
18 Code §§ 17200, *et seq.*; and (5) *quantum meruit*. [Doc. No. 1, Compl.] On May 10, 2010, GC
19 Services removed the action to this Court pursuant to the Class Action Fairness Act of 2005, 28
20 U.S.C. § 1332(d)(2). [Doc. No. 1, Notice of Removal.]

21 Because of a related action in the Eastern District of Missouri, GC Services filed a motion
22 to dismiss, transfer, or stay the case pending resolution of the related action. [Doc. No. 2.] Shortly
23 thereafter, Plaintiff filed a motion to remand the action back to state court. [Doc. No. 4.] On July
24 6, 2010, the Court denied GC Services’ motion to dismiss and also denied Plaintiff’s motion to
25 remand to state court. Thereafter, GC Services filed an answer. [Doc. No. 15.] On December 3,
26 2010, Plaintiff filed a motion for class certification. [Doc. No. 26.] GC Services opposed the
27 motion. [Doc. No. 32.]
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1 After significant discovery, on February 1, 2011 and February 2, 2011, the parties engaged
2 in a mediation session with experienced mediator Joan S. Morrow. [Doc. No. 54-2, Declaration of
3 Jason M. Lindner (“Lindner Decl.”) ¶ 2.] Although the parties did not reach an agreement at the
4 mediation, the parties continued to have settlement discussions and conducted data analysis that
5 eventually resulted in an agreement to settle the action on May 19, 2011. [Id. ¶ 3.] The Court
6 dismissed Plaintiff’s motion for class certification without prejudice after the parties notified the
7 Court that the case had settled. [Doc. Nos. 49, 51.] The parties drafted a Joint Stipulation of
8 Settlement, [Doc. No. 54-2, Linder Decl. Ex. A (“Class Settlement”)], and submitted that
9 agreement to this Court for preliminary approval. [Doc. No. 54.]

10 **III. The Settlement**

11 Pursuant to the proposed settlement, CG Services agreed to pay \$975,000 as the total
12 settlement fund, without admitting liability, and to deposit the funds with a settlement
13 administrator following final approval. [Class Settlement §§ 2.22, 6.2.1, 7.4.1.] The settlement
14 fund equals the entire amount to be paid to the class, including attorneys’ fees (not to exceed
15 \$292,500–30% of the total settlement fund), expert fees, costs of administration of settlement,
16 litigation costs (not to exceed \$20,000), and an incentive award to the named Plaintiff Brooke
17 Gardner (not to exceed \$3,000), but excluding employment taxes. [Id. § 2.22, 6.3, 6.4.]

18 The class consists of all current and former “non-exempt” (i.e., overtime eligible)
19 telephone-dedicated call center representatives who work or worked for GC Services at locations
20 in California at any time between March 24, 2006 and June 15, 2011. [Id. § 2.5.] The parties
21 estimated the size of the putative class at approximately 1,524 individuals. [Id.]

22 Class members who wanted to opt-out had the obligation to notify the settlement
23 administrator within 45 days after the initial mailing of the class notice. [Class Settlement §
24 7.2.7.] Every class member that did not opt-out from this settlement and submitted a claim form
25 within sixty days will receive a cash payment from the settlement fund. [Id. § 7.4.2.] The amount
26 of payment received will be calculated by determining the pro rata share of the funds based on
27 each class member’s amount of weeks worked within the relevant time period, but the amount for
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1 each class member will be no less than \$50. [Id. § 6.7.2.] In addition, the settlement agreement
2 provides that if the amount claimed does not equal at least 50% of the settlement pool, the
3 payments to qualified class members will be reapportioned so that at least 50% of the settlement
4 pool is paid to the class members. [Id. § 6.7.2(d).] Unclaimed funds above the 50% minimum will
5 revert back to GC Services. [Id.]

6 In exchange, GC Services will receive a release from the class members of all wage and
7 hour claims asserted in this action along with any wage and hour claims that could have been
8 asserted. [Id. §§ 2.28, 6.8.1-6.8.4.] This release extends only to class members who do not opt-
9 out of the class. [Id. §§ 2.32, 6.8.1-6.8.4.]

10 **IV. Preliminary Approval of the Settlement and Reaction of the Class Members**

11 On November 1, 2011, the Court preliminarily certified the class for settlement purposes,
12 appointed class counsel, granted preliminary approval of the settlement, and ordered Plaintiff to
13 disseminate notice of the settlement to the class members. [Doc. No. 59.] Notice was mailed to
14 all 1,470 class members on December 9, 2011. [Doc. No. 62-3, Declaration of Michael Bui (“Bui
15 Decl.”) ¶ 5.] The notice provided class members with an opportunity to file a claim for monetary
16 relief, opt out of the settlement, or object to the settlement. [Doc. No. 63-2, Declaration of Jason
17 M. Lindner (“Lindner Decl.”) Ex. A.] Out of the 1,470 notice packets mailed, 349 were returned
18 by the post office as undeliverable. [Doc. No. 62-3, Bui Decl. ¶ 6.] After conducting an additional
19 search for updated addresses, 280 of those notice packets were re-mailed. [Id.] Ultimately, 182
20 notice packets were undeliverable because the Claim Administrator was unable to find a
21 deliverable address. [Id.]

22 The Claims Administrator received a total of 489 completed claims forms, with 10
23 untimely claims and 2 deficient forms. [Id. ¶ 7.] The claim forms filed consisted of 33.26% of the
24 class and 54.45% of the total class weeks worked. [Id.] The Claim Administrator has not received
25 any requests to opt out of the class or objections to the settlement. [Id. ¶ 8.]

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1 **DISCUSSION**

2 When the parties reach a settlement agreement prior to class certification, the court is under
3 an obligation to “peruse the proposed compromise to ratify both the propriety of the certification
4 and the fairness of the settlement.” Staton v. Boeing Co., 327 F.3d 938, 952 (9th Cir. 2003).
5 Thus, the court must first assess whether a class exists, and second, determine whether the
6 proposed settlement is “fundamentally fair, adequate, and reasonable.” Id. (citations omitted).
7 Accordingly, in the present case, the Court will first examine the propriety of class certification,
8 followed by the fairness of the settlement agreement, and then the request for attorneys’ fees,
9 costs, and an enhancement award.

10 **I. Class certification**

11 A plaintiff seeking a Rule 23(b)(3) class certification must first satisfy the prerequisites of
12 Rule 23(a). Once subsection (a) is satisfied, the purported class must then fulfill the requirements
13 of Rule 23(b)(3). In the present case, the Court had previously preliminarily certified a class
14 consisting of:

15 [A]ll current and former non-exempt (i.e., overtime eligible) telephone-dedicated
16 representatives who work or worked for Defendant, its parents, subsidiaries,
17 affiliates, predecessors or assigns at locations in California at any time between
18 March 24, 2006 and June 15, 2011 (“Class Period”), estimated at approximately
19 1524 but to include up to 1600 individuals.

20 [Doc. No. 59 at 4, 8.] At that time, the Court concluded that the proposed classes satisfied the
21 numerosity, commonality, typicality, and adequacy of representation requirements of Rule 23(a).

22 [Id. at 5-6.] The Court also found that the proposed classes satisfied the predominance and
23 superiority requirements of Rule 23(b)(3). [Id. at 7-8.] Having reviewed those elements again, the
24 Court adopts its prior analysis in this regard. Accordingly, because Plaintiff has satisfied the
25 requirements of both Rule 23(a) and Rule 23(b)(3), the Court **GRANTS** certification of the class
26 for the purposes of settlement.

27 **II. The Settlement**

28 Federal Rule of Civil Procedure 23(e) requires the court to determine whether a proposed
settlement is “fundamentally fair, adequate, and reasonable.” Staton, 327 F.3d at 959 (quoting

1 Hanlon, 150 F.3d at 1026). To make this determination, the court must consider a number of
2 factors, including: (1) the strength of plaintiff’s case; (2) “the risk, expense, complexity, and
3 likely duration of further litigation;” (3) “the risk of maintaining class action status throughout the
4 trial;” (4) the amount offered in settlement; (5) the extent of discovery completed, and the stage of
5 the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
6 participant; and (8) the reaction of the class members to the proposed settlement. See id. (quoting
7 Molski v. Gleich, 318 F.3d 937, 953 (9th Cir. 2003)). In addition, the settlement may not be the
8 product of collusion among the negotiating parties. In re Mego Fin. Corp. Sec. Litig., 213 F.3d
9 454, 458 (9th Cir. 2000) (citing Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1290 (9th Cir.
10 1992)).

11 A. The strength of Plaintiff’s case, the risk, expense, and likely duration of further
12 litigation, and the risk of maintaining class action status throughout the trial

13 Plaintiff may have a meritorious case, but Defendant has represented that it will vigorously
14 contest Plaintiff’s claims. [Doc. No. 54 at 8.] The disputed factual and legal issues would be
15 complex and costly to resolve at trial. In addition, settlement at this time would be beneficial
16 because a case pending before the California Supreme Court has the potential to change the
17 analysis of the class’s meal and rest break claims. [Id.] See Brinker Restaurant Corp. v. Sup. Ct.,
18 85 Cal. Rptr. 3d 688 (Cal. 2008).

19 The action was only at the class certification stage when settlement was achieved.
20 Therefore, a significant amount of the case remained to be litigated, including additional
21 discovery, summary judgment motions, expert reports, trial and subsequent appeals. The
22 settlement prevents the likely expense, complexity, and long duration of the remaining litigation
23 from impairing or delaying relief to the class members. In addition, because settlement was
24 reached prior to a hearing on Plaintiff’s motion for class certification, settlement was reached at a
25 time when there was still a risk that the class would not be certified by the Court. Accordingly, the
26 Court agrees that the actual recovery through settlement confers substantial benefits on the class
27 that outweighs the potential recovery that could have been obtained through full adjudication.

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1 B. The amount offered in settlement

2 In the present case, the proposed settlement provides class members with immediate
3 monetary relief, with an average award of around several hundred dollars and a minimum award of
4 \$50. [Doc. No. 62-1 at 2-3.] This settlement is a good result for the class and eliminates the risks,
5 expenses, and delay associated with continued litigation. Accordingly, the Court finds the amount
6 offered in settlement weighs in favor of granting final approval of the settlement.

7 C. The extent of discovery completed and the stage of the proceedings

8 In the context of class action settlements, as long as the parties have sufficient information
9 to make an informed decision about settlement, ““formal discovery is not a necessary ticket to the
10 bargaining table.” Linney v. Cellular Alaska P’ship, 151 F.3d 1234, 1239 (9th Cir. 1998)
11 (quoting In re Chicken Antitrust Litig., 669 F.2d 228, 241 (5th Cir.1982)).

12 In the present case, the parties appear to have engaged in substantial and exhaustive
13 informal and formal discovery. The settlement represents the culmination of over seven months of
14 negotiation, including negotiations at a mediation session. [Class Settlement § 3.4.] Counsel for
15 both parties have conducted significant discovery and analysis of data in arriving at the settlement,
16 including reviewing and analyzing the time entry data for the class members in order to estimate a
17 fair and reasonable recovery for them. [Doc. No. 54-2, Lindner Decl. ¶¶ 2-3.] Class counsel was
18 therefore able to negotiate the settlement based on a full evidentiary record and a thorough
19 understanding of the strengths and weaknesses of the claims. Accordingly, the parties’ extensive
20 investigation, discovery, and subsequent settlement discussions weigh heavily in favor of granting
21 final approval.

22 D. The experience and views of counsel

23 Plaintiff’s counsel has extensive experience acting as class counsel in complex class action
24 cases including wage and house class actions. [See Doc. No. 26-3, Declaration of Eric Lindner
25 (“Lindner Decl.”) Ex. J; Doc. No. 26-5, Declaration of Mark Potashnick (“Potashnick Decl.”) ¶¶
26 4-8, Ex. A; Doc. No. 57, Declaration of J. Farrest Taylor (“Taylor Decl.”) ¶¶ 2-4, Exs. A-B; Doc.
27 No. 58, Declaration of G. Patrick Jacobs (“Jacobs Decl.”) ¶¶ 1-11.] Accordingly, because counsel
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1 believes the present settlement is both fair and adequate, this also weighs in favor of granting final
2 approval.

3 E. The reaction of the class members to the proposed settlement

4 After dissemination of the class notice to the 1,470 members, which provided each class
5 member with the terms of the settlement and with an option to opt-out or file an objection, not one
6 class member has filed an objection or a request for exclusion. [Doc. No. 62-3, Bui Decl. ¶ 8.]

7 The absence of any objector strongly supports the fairness, reasonableness, and adequacy of the
8 settlement. See In re Austrian & German Bank Holocaust Litig., 80 F. Supp. 2d 164, 175
9 (S.D.N.Y. 2000) (“If only a small number of objections are received, that fact can be viewed as
10 indicative of the adequacy of the settlement.” (citations omitted)); Boyd v. Bechtel Corp., 485 F.
11 Supp. 610, 624 (N.D. Cal. 1979) (finding “persuasive” the fact that 84% of the class has filed no
12 opposition).

13 Moreover, there was a total of 489 claim forms returned, which amounts to 54.45% of the
14 total class weeks worked. This is a significant return rate that also strongly supports the fairness,
15 reasonableness, and adequacy of the settlement. Accordingly, the overall reaction of the class
16 members weighs in favor of granting final approval.

17 F. Collusion between the parties

18 The collusion inquiry addresses the possibility the agreement is the result of either overt
19 misconduct by the negotiators or improper incentives of certain class members at the expense of
20 other members of the class. Stanton, 327 F.3d at 960. In the present case, because there is no
21 evidence of overt misconduct, the Court’s inquiry focuses on the aspects of the settlement that lend
22 themselves to self-interested action.

23 The \$3,000 incentive award for Plaintiff Gardner does not appear to be the result of
24 collusion. The Court evaluates incentive awards using “relevant factors including the actions the
25 plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted
26 from those actions, . . . the amount of time and effort the plaintiff expended in pursuing the
27 litigation . . . and reasonable fears of workplace retaliation.” Stanton, 327 F.3d at 977 (quoting
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1 Cook v. Niedert, 142 F.3d 1004, 1016 (7th Cir. 1998)). In the present case, Plaintiff has protected
2 the interests of the class by engaging in investigation and discovery, attending a deposition, and
3 assisting counsel with other aspects of the case. [Doc. No. 54-2, Lindner Decl. ¶ 5.] Therefore,
4 the \$3,000 enhancement award to Plaintiff appears to be reasonable in light of her efforts in this
5 litigation.

6 Finally, the attorneys' fees also do not appear to be the result of collusion. Plaintiff's
7 counsel may simultaneously negotiate the merits of the action and their attorneys' fees. Stanton,
8 327 F.3d at 971. As discussed in more detail below, the Court finds reasonable the recovery of
9 attorneys' fees, litigation costs, and administration costs sought by Plaintiff's counsel.

10 For the foregoing reasons, the Court finds that the settlement in this case is "fair,
11 reasonable, and adequate." FED. R. CIV. P. 23(e)(2); Stanton, 327 F.3d at 959. Accordingly, the
12 Court **GRANTS** Plaintiff's motion for final approval of the settlement.

13 **III. Attorneys' fees and costs for class counsel**

14 The settlement agreement provides that Class Counsel may recover an award of costs in
15 administering the settlement, litigation costs up to \$20,000, and attorneys' fees up to \$292,500.
16 [Class Settlement §§ 2.22, 6.6.1.] Parties to a class action may appropriately negotiate the
17 payment of attorneys' fees and costs in conjunction with the settlement of the action itself. See
18 Evans v. Jeff D., 475 U.S. 717, 734-35 (1986).

19 In the present case, the settlement agreement provides that Plaintiff's counsel could recover
20 an award of litigation costs up to \$20,000. [Class Settlement § 2.22.] Because Plaintiff's counsel
21 has already incurred litigation costs in the amount of \$22,649.61, [Doc. No. 63-2, Lindner Decl. ¶
22 4], the Court finds the award of \$20,000 to be reasonable. Similarly, the request of \$17,000 in
23 costs for administering the settlement is reasonable in light of the fact that it is less than the
24 \$25,000 that was set aside by the settlement agreement for administration costs. [Class Settlement
25 § 6.6.1.]

26 With respect to the attorneys' fees, the Ninth Circuit has established a 25% "benchmark"
27 for common fund cases. Torrisi v. Tucson Elec. Power Co., 8 F.3d 1370, 1376 (9th Cir. 1993).
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1 This “benchmark percentage should be adjusted, or replaced by a lodestar calculation, when
2 special circumstances indicate that the percentage recovery would be either too small or too large
3 in light of the hours devoted to the case or other relevant factors.” Six (6) Mexican Workers v. Az.
4 Citrus Growers, 904 F.2d 1301, 1311 (1990).

5 Regardless of whether the court uses the percentage approach or the lodestar method, the
6 main inquiry is whether the end result is reasonable. Powers v. Eichen, 229 F.3d 1249, 1258 (9th
7 Cir. 2000). The Ninth Circuit has identified a number of factors that may be relevant in
8 determining if the award is reasonable: (1) the results achieved; (2) the risks of litigation; (3) the
9 skill required and the quality of work; (4) the contingent nature of the fee; (5) the burdens carried
10 by class counsel; and (6) the awards made in similar cases. See Vizcaino v. Microsoft Corp., 290
11 F.3d 1043, 1048-50 (9th Cir. 2002). Nonetheless, an explanation is necessary when the district
12 court departs from the “benchmark” of 25% of recovery. Powers, 229 F.3d at 1256-57. The Court
13 turns to each of these factors in turn.

14 First, the results achieved in this case were very favorable. Class members are provided
15 with immediate monetary relief, with an average award of around several hundred dollars and a
16 minimum award of \$50. [Doc. No. 62-1 at 2-3.] Second, as detailed above, the risks of litigation
17 were real and substantial. Third, the complexity and potential duration of the case, coupled with
18 the intensity of settlement negotiations, weighs in favor of departing from the 25% “benchmark.”
19 Fourth, class counsel took this case on a contingent fee basis and had to forego other financial
20 opportunities to litigate it. [Doc. No. 63-1 at 5-6.] Fifth, the request for attorneys’ fees in the
21 amount of 30% of the common fund falls within the range of acceptable attorneys’ fees in Ninth
22 Circuit cases. See Vasquez v. Coast Valley Roofing, Inc., 266 F.R.D. 482, 491 (E.D. Cal. 2010)
23 (noting that “[t]he typical range of acceptable attorneys’ fees in the Ninth Circuit is 20% to 33
24 1/3% of the total settlement value, with 25% considered the benchmark”); Singer v. Becton
25 Dickinson & Co., 2010 U.S. Dist. LEXIS 53416, at *22-23 (S.D. Cal. Jun. 1, 2010) (noting that
26 the amount of 33.33% of the common fund for a wage and hour class action settlement “falls
27 within the typical range of 20% to 50% awarded in similar cases”). Finally, class counsel has
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1 represented that the 30% figure is less than the amount that would have been calculated using the
2 lodestar method. [Doc. No. 63-2, Lindner Decl. ¶ 3.] Cf. In re Bluetooth Headset Prods. Liab.
3 Litig., 654 F.3d 935, 944-45 (9th Cir. 2011) (encouraging district courts to cross-check their
4 calculations under the percentage-of-recovery method against the lodestar method).

5 For all of the foregoing reasons, the Court believes that a departure from the 25%
6 “benchmark” is warranted in this case. This is especially so in light of the fact that not a single
7 class member objected to Plaintiff’s counsel’s intent to seek up to \$292,500 in attorneys’ fees.
8 Accordingly, the Court finds that the attorneys’ fees and costs requested are reasonable and
9 **GRANTS** Plaintiff’s motion for attorneys’ fees and costs.

10 **IV. Enhancement award for class representative**

11 Finally, the \$3,000 incentive award for Plaintiff Brooke Gardner also appears to be
12 reasonable. “The criteria courts may consider in determining whether to make an incentive award
13 include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2)
14 the notoriety and personal difficulties encountered by the class representative; 3) the amount of
15 time and effort spent by the class representative; 4) the duration of the litigation and; 5) the
16 personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.”
17 Van Vranken v. Atlantic Richfield Co., 901 F. Supp. 294, 299 (N.D. Cal. 1995) (citations omitted).

18 In the present case, the above factors weigh in favor of approving the enhancement award
19 requested. Plaintiff has protected the interests of the class by engaging in investigation and
20 discovery, attending a deposition, and assisting counsel with other aspects of the case. [Doc. No.
21 54-2, Lindner Decl. ¶ 5.] Plaintiff has undergone the personal risk of stepping forward as a named
22 plaintiff and testifying against former friends and colleagues. [Id.] Further, Plaintiff is directly
23 responsible for the monetary benefits conferred on the class by the settlement. Finally, no class
24 members have objected to Plaintiff’s intent to seek an enhancement award of \$3,000.

25 The \$3,000 incentive award is also well within the acceptable range awarded in similar
26 cases. See, e.g., Fulford v. Logitech, Inc., 2010 WL 807448, at *3 n.1 (N.D. Cal. 2010) (collecting
27 cases awarding service payments ranging from \$5,000 to \$40,000). Accordingly, the Court finds
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1 the enhancement award requested to be reasonable and **GRANTS** Plaintiff's motion for an
2 enhancement award.

3 **CONCLUSION**

4 For the foregoing reasons, the Court: (1) **CERTIFIES** the proposed class; (2) **GRANTS**
5 final approval of the settlement; (3) **GRANTS** the request for award of attorneys' fees and costs
6 and **AWARDS** Class Counsel litigation costs in the amount of \$20,000, settlement administrative
7 costs in the amount of \$17,000, and attorneys' fees in the amount of \$292,500; and (4) **GRANTS**
8 the request for an enhancement award and **AWARDS** Plaintiff Brooke Gardner a class
9 representative enhancement award in the amount of \$3,000.

10 **IT IS SO ORDERED.**

11 **DATED:** April 2, 2012

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13 **IRMA E. GONZALEZ, Chief Judge**
United States District Court

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