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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF ALAMEDA**

13 ALEXANDER GUREVICH, et al.,
14 Plaintiff,
15 v.
16 ROYAL AMBULANCE, INC., et al.,
17 Defendants.

18
19 KEVIN DICKENS, et al.,
20 Plaintiffs,
21 v.
22 ROYAL AMBULANCE, INC., et al.,
23 Defendants.
24

**CASE NOS. RG12631895 (Lead Case)
RG12639791**

[Assigned to the Hon. Wynne Carvill, Dept. 21]

CLASS ACTION

**UNOPPOSED NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT AND
CERTIFICATION OF SETTLEMENT CLASS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

**Hearing Date: April 8, 2015
Time: 8:30 a.m.
Place: Dept. 21
Reference No. R-1609105**

**Complaints filed: May 24, 2012
July 18, 2012**

Trial Date: Not set

1 TO THE COURT, TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:
2 PLEASE TAKE NOTICE THAT on April 8, 2015 at 8:30 a.m., in Department 21 of this Court
3 located at 1225 Fallon Street, Oakland, California, pursuant to Code of Civil Procedure § 382
4 and California Rules of Court 3.769, Plaintiffs, ALEXANDER GUREVICH and Plaintiffs
5 KEVIN DICKENS, PATRICK OPPIDO, SPENCER STECZ, CHRIS HERN, and PHILIP
6 JONES (“Plaintiffs”) will move the Court for an Order granting preliminary approval of the
7 proposed class action settlement between Plaintiffs and Defendant ROYAL AMBULANCE,
8 INC. (“Defendant” or, “Royal Ambulance”). Plaintiffs will further move the Court for an Order:
9

- 10 1. Certifying a Class for settlement purposes;
- 11 2. Appointing ALEXANDER GUREVICH, KEVIN DICKENS, PATRICK
12 OPPIDO, SPENCER STECZ, CHRIS HERN, and PHILIP JONES as the Class
13 Representatives for settlement purposes;
- 14 3. Appointing the law firms of Smoger & Associates, Arbogast Law, A Professional
15 Corporation, the Law Office of Arthur R. Siegel and Jaret & Jaret as Class
16 Counsel for settlement purposes;
- 17 4. Approving the proposed Notice of Class Action Settlement in the form attached as
18 Exhibit 1 to the Settlement Agreement (“Agreement”), to be mailed to the Class;
- 19 5. Approving the opt out and objection procedures provided in the Agreement and
20 set forth in the Notice of Class Action Settlement;
- 21 6. Directing Defendant to furnish the Administrator within 14 calendar days after the
22 Court grants preliminary approval of the Settlement the names and last known
23 addresses and telephone numbers of all Class Members, as well as any other
24 information the Administrator may reasonably need to administer this settlement;
25 and
- 26 7. Setting a Final Approval Hearing sixteen weeks after preliminary approval of the
27 Settlement in Department 21 of the Alameda County Superior Court.

1 The motion will be based upon this notice, the attached memorandum of points and
2 authorities, the Declarations of Arthur R. Siegel, Steve Grau, Steven M. Bronson, Robert A.
3 Jaret, and Charles E. Ferrara filed concurrently herewith, the records and files in this action, and
4 any other further evidence or argument that the Court may properly receive at or before the
5 hearing.
6

7 Respectfully submitted,

8 DATED: March 17, 2015

9 Plaintiffs, Kevin Dickens, Patrick Oppido, Spencer Stecz,
10 Chris Hern, Phillip Jones and Proposed Class

11 By attorneys
12 **LAW OFFICES OF ARTHUR R. SIEGEL**

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Alexander Gurevich, Kevin Dickens, Patrick Oppido, Spencer Stecz, Chris
4 Hern, and Philip Jones¹, referred to herein as the "Settling Plaintiffs" or "Class Representatives,"
5 seek preliminary approval of a \$650,000 class action settlement on behalf of approximately 166
6 current and 429 former Ambulance Drivers / Emergency Medical Technicians employed by
7 Defendant Royal Ambulance, Inc. ("Defendant" , "Royal" or "Royal Ambulance"). Plaintiffs
8 aver, *inter alia*, that Defendant violated various provisions of the California Labor Code, Wage
9 Orders and the California Business and Professions Code by allegedly failing to pay overtime
10 compensation, failing to provide meal and rest breaks, failing to provide proper wage statements,
11 and failing to pay all wages due at the time of termination.

12
13 The Settlement Class consists of residents of California who are currently and were
14 formerly employed by Defendant as Emergency Medical Technicians - Ambulance Drivers, from
15 May 24, 2008, through the date of preliminary approval of this Class Action Settlement
16 Agreement, including Representative Plaintiffs. For purposes of this settlement only, all parties
17 agree that the proposed Settlement Class satisfies each of the requirements of Code of Civil
18 Procedure Section 382 for class certification.

19 Plaintiffs submit that the settlement is fair, adequate, reasonable, and confers a substantial
20 benefit to the class under the facts and circumstances of the case. Accordingly, Plaintiffs request
21 that the Court grant preliminary approval of the Settlement Agreement and Release.

22
23
24
25 ¹ Before the Court are consolidated class actions: (1) *Alexander Gurevich v. Royal*
26 *Ambulance, Inc.*, Alameda County Superior Court Case No. RG12631895 ("the *Gurevich*
27 *Action*"); and (2) *Kevin Dickens, Patrick Oppido, Spencer Stecz, Chris Hern, and Philip Jones v.*
28 *Royal Ambulance, Inc.*, Alameda County Superior Court Case No. RG12639791 ("the *Dickens*
Action"). Collectively, the *Gurevich* Action and the *Dickens* Action shall be referred to as the
Actions.

1 (“Settlement” or “Agreement”) submitted herewith, conditionally certify the Settlement Class,
2 approve the proposed Settlement Notices, and set a hearing date for final settlement approval.
3

4 **II. FACTUAL AND PROCEDURAL BACKGROUND**

5 **A. Procedural History**

6 Plaintiffs, on behalf of themselves and other employees who worked as Ambulance
7 Drivers for Defendant in California, filed the Actions against Defendant for alleged violations of
8 California wage and hour laws in the Superior Court for the State of California, County of
9 Alameda. Following the Court’s Order To Consolidate Cases on October 11, 2013, a
10 Consolidated Master Complaint was filed in the Actions on November 12, 2013.

11 **B. The Master Complaint**

12 The Master Complaint alleges that Defendant violated various provisions of the
13 California Labor Code and the California Business and Professions Code by allegedly failing to
14 pay overtime compensation, failing to provide meal and rest breaks, failing to provide proper
15 wage statements, and failing to pay all wages due at the time of termination. See Master
16 Complaint. In particular, Plaintiffs and the other similarly situated Emergency Medical
17 Technician/Ambulance Drivers were employed by Defendant Royal Ambulance, Inc. during the
18 Liability Period (from May 24, 2008 to the date of preliminary approval of the Settlement
19 Agreement).

20 The Master Complaint alleges that Defendant : (i) failed to pay overtime wages in
21 violation of Labor Code §§ 510, 1194 and Wage Order No. 9; (ii) failed to provide meal periods
22 in violation of Labor Code §§ 226.7, 512 and Wage Order No. 9; (iii) failed to provide rest
23 periods in violation of Labor Code § 226.7 and Wage Order No. 9; (iv) breached the contracts to
24 pay wages; (v) failed to pay all wages upon termination in violation of Labor Code § 203; (vi)
25 failed to furnish and maintain timely and accurate wage statements in violation of Labor Code §
26 226; (vii) failed to pay minimum wages in violation of Labor Code §§ 510, 558, 1182, 1182.12,
27 1194, 1197; (viii) for violations of California’s Unfair Competition Law (“UCL”), Bus. & Prof.

1 Code § 17200 *et seq.*; and (ix) for injunctive relief forbidding the destruction of records
2 pertaining to the putative Class. Additionally, Plaintiff sought relief, including penalties, under
3 the Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.*
4

5 The legal issues in the Action concern:

- 6 a. Whether Defendant is liable to Plaintiffs and the Class for damages for failing to
7 pay proper overtime wages;
- 8 b. Whether Defendant is liable to Plaintiffs and the Class for damages for failing to
9 provide meal periods;
- 10 c. Whether Defendant is liable to Plaintiffs and the Class for damages for failing to
11 provide rest periods;
- 12 d. Whether Defendant is liable to Plaintiffs and the Class for damages for its breach
13 of contract to pay wages;
- 14 e. Whether Defendant willfully failed to pay its employees' wages upon termination
15 in violation of California Labor Code section 202 entitling Plaintiffs and the Class
16 members to waiting time penalties;
- 17 f. Whether Defendant is liable to Plaintiffs and the Class members for failing to
18 furnish and maintain timely and accurate wage records;
- 19 g. Whether Defendant engaged in unlawful and unfair business practices in violation
20 of Business & Professions Code section 17200, and if so, whether Plaintiff is
21 entitled to equitable relief including but not limited to restitution and injunctive
22 relief;
- 23 h. Whether Defendant should be enjoined from the destruction of records pertaining
24 to the putative Class;
- 25 i. Whether Defendant is or was Plaintiffs' and the Class members' employer during
26 the Liability Period;
- 27

1 j. Whether certification of the purposed class is proper. After being afforded an
2 opportunity to conduct sufficient discovery concerning Plaintiffs' individual and
3 class claims, Plaintiff will move for certification of all claims which meet the
4 requirements of certification (numerosity, commonality, typicality, adequacy and
5 superiority);

6 k. The appropriate amount of damages and restitution.

7
8 **Remedies:** Plaintiffs, on behalf of themselves and all others similarly situated, seek all
9 unpaid overtime wages due to Plaintiff and each Class member; for one hour of wages due
10 Plaintiff and each Class member for each work period of more than five (5) hours when they did
11 not receive an uninterrupted thirty (30) minute meal period; one hour of wages due Plaintiff and
12 each Class member for each work period of more than four (4) hours when they did not receive
13 an uninterrupted ten (10) minute rest period; continuation wages under Labor Code § 203;
14 statutory penalties under Labor Code § 226(e); damages as provided by law; an order awarding
15 restitution of the unpaid overtime, and premium wages due Plaintiff and the Class; for
16 Declaratory Relief where applicable; for a mandatory injunction requiring Defendant to comply
17 with Labor Code § 226(a) with respect to keeping and maintaining employee records; for a
18 prohibitory injunction forbidding Defendant from destroying employee records that it is required
19 to keep and maintain pursuant to Labor Code § 226; prejudgment interest at the maximum legal
20 rate; reasonable attorneys' fees; costs of suit; and such other relief as the Court may deem just
21 and proper.

22 **C. Settlement**

23 Prior to reaching a settlement, the parties engaged in extensive informal discovery.
24 Among other things, counsel for Defendant produced relevant electronic documents (redacting
25 the names of current and former employees), including: (1) a class list (including date of hire
26 and, if no longer employed, date of termination); (2) payroll data (1-2-09 to 5-18-12); (3) time
27 punch data (July 2008 to May 2012); and (4) information about the dates on which relevant

1 employees executed 24-Hour work agreements (along with copies of each agreement).
2 Declaration of Arthur R. Siegel in Support of Motion For Preliminary Approval of Class Action
3 (“Siegel Decl.”), ¶4. Additionally, attorneys for both sides met on July 26, 2013, to review
4 Defendant's financial records. During that session, Royal disclosed cash flow summaries
5 covering 2007 through 2012, tax returns from 2007 through 2012, banking records for 2011 and
6 2012, and a cash flow summary for the first half of 2013 under an “Attorneys Eyes Only”
7 protective order. Defendant made its accountant available at the meeting to answer questions
8 posed by Plaintiffs' counsel and their consultant, a Certified Public Accountant who also
9 attended the disclosure meeting. Siegel Decl., ¶6.
10

11 The parties in the Action participated in two full days of private mediation on April 29,
12 2013 and August 6, 2013 with mediator Mark S. Rudy. After mediation, Plaintiffs and
13 Defendants conducted substantial arms-length negotiations. Settlement efforts included a
14 meeting with all counsel, a financial expert retained by Plaintiffs to examine financial
15 information furnished by Defendant and Defendant's accountant, which was held between the
16 two mediation sessions. The mediator engaged in extensive post-mediation communication with
17 counsel for the parties, and counsel for the parties themselves engaged in substantial direct
18 negotiation. Negotiations continued, as did some discovery until a Case Management
19 Conference on July 17, 2014 at which impediments to settlement were discussed with the Court.
20 One main impediment consisted of the language of the release, which Plaintiffs were concerned
21 with it not being narrowly tailored to only release the claims of the Class which were alleged in
22 the Master Complaint and were being compensated by Defendant. The Court agreed and,
23 thereafter, Defendant made a revised proposal for settlement which Plaintiffs believed to be fair,
24 adequate, and reasonable for the Class on August 22, 2014. At that point, Plaintiffs accepted the
25 offer of settlement. Siegel Decl., ¶¶6, 7.
26

27 ///

28 ///

1 **III. THE SETTLEMENT TERMS**

2 **A. The Class Definition**

3 The Settlement Class is defined as follows:

4 All individuals who are residents of California and who are currently and were
5 formerly employed by Defendant as Emergency Medical Technicians -
6 Ambulance Drivers, from May 24, 2008, through the date of preliminary approval
7 of the Class Action Settlement Agreement, including Representative Plaintiffs.

8
9 (Joint Stipulation and Settlement Agreement (“Agreement”), Page 9, Section III, ¶12, (Siegel
10 Decl., Ex. 1.)

11 For purposes of the Settlement, payments to Settlement Class Members will consist of
12 payments divided 45% to wages, 15% to waiting time penalties, and 40% to other penalties and
13 interest. The 15% waiting time penalty payment will only go to Settlement Class Members no
14 longer employed by Defendant, which is in accordance with statutory eligibility for such
15 penalties under Labor Code Section 203(a). Agreement, ¶31.

16 **B. The Proposed Monetary Settlement**

17 The proposed settlement resolves all claims of the Plaintiffs and the proposed Settlement
18 Class against Defendants related to alleged failure to pay wages, failure to provide meal breaks,
19 failure to authorize and permit rest breaks, failure to furnish timely and accurate wage
20 statements, unlawful or unfair business practices in violation of California Business &
21 Professions Code Section 17200, et seq., including waiting time penalties, interest, civil penalties
22 provided by the Labor Code Private Attorneys General Act of 2004 (“PAGA”) and other
23 penalties under federal and state law. The detailed terms are contained in the Settlement
24 Agreement attached as Exhibit 1 to the Siegel Declaration filed herewith. Key provisions of the
25 proposed settlement include the following:

- 26
- Defendant stipulates to certification of a Settlement Class for purposes of this
27 Settlement only;

- 1 • Defendant will pay a total of \$650,000, which is referred to as the Gross
2 Settlement Amount, in installments of \$450,000 (deposited 10 days after
3 Preliminary Approval), \$100,000 (deposited no later than one year from initial
4 deposit) and \$100,000 (deposited no later than two years from initial deposit).
- 5 • Net Payments are to be divided as follows: 45% to wages (Paid to all Settlement
6 Class Members), 15% to Waiting Time (Labor Code §203) Penalties (paid to
7 former employee Settlement Class Members only), and 40% to Other Penalties
8 and Interest) (Paid to all Settlement Class Members).
- 9 • The Employer's share of payroll taxes and contributions shall be paid by
10 Defendant from its separate funds, and these will be paid separate and apart from
11 the Gross Settlement Amount.
- 12 • No claim or other submission is necessary in order to become a member of the
13 Settlement Class;
- 14 • Settlement Class Members will be mailed a check automatically if they do not opt
15 out of the Settlement;
- 16 • The settlement will release wage-and-hour claims for those Settlement Class
17 Members who are mailed a check;
- 18 • The release for those Class Members is precisely tailored to only those claims
19 alleged in the Consolidated Master Complaint;
- 20 • After deducting Class Counsel's attorneys' fees and costs, service payments to the
21 Plaintiffs, a portion of settlement administration costs, and a payment to
22 California Labor Workforce Development Agency, the Net Settlement Amount
23 will be distributed and paid to Settlement Class Members who do not opt out of
24 the Settlement, with each Settlement Class Member's share to be determined
25 based on the gross earnings of each Settlement Class Member, as a percentage of
26 the aggregate gross earnings of all Settlement Class Members (Agreement, ¶ 31);
27
28

- 1 • Any settlement checks that are mailed to the Settlement Class Members and
2 remain uncashed after 180 days of the date of issuance will be cancelled, and the
3 moneys will be directed to one or more cy pres recipients benefitting California
4 Employees;
- 5 • The notice portion of the Settlement will be administered by Angeion Group, a
6 third-party Administrator;
- 7 • Defendant will not oppose service payments in the total amount of \$32,000 to the
8 Named Plaintiffs, to be paid out of the Gross Settlement Amount;
- 9 • Defendant will not oppose payment to Class Counsel for fees up to the 33.3% of
10 the Gross Settlement Amount and costs of up to \$25,000, to be paid out of the
11 Gross Settlement Amount.
12

13 **C. Settlement Administration**

14 The Parties have agreed to use Angeion Group to serve as the Settlement Administrator.
15 The firm is highly experienced in claims administration (60 years managing class action related
16 matters) and supported over 2000 class action administrations , including the distribution of
17 approximately \$10 billion to class members. Charles E. Ferrara Declaration,

18 The Settlement Administrator will, among other things, distribute the Class Settlement
19 Notices, calculate Individual Settlement Allocations for each Settlement Class member, resolve
20 any disputes over the dates of employment, gross wages paid during the class period and/or
21 membership in the Settlement Class, draw and distribute checks to the Settlement Class
22 Members, administer the Fund, prepare and file any necessary tax reporting for the Fund, and
23 report to the Court and the Parties on the notice/opt out process and payment of the Fund.

24 Individual notices will be mailed to all Settlement Class Members, whose contact and
25 employment information the Defendant will provide to the Settlement Administrator.
26 Agreement, ¶¶ 19, 20, 23, 24, 28, 29, 30, 31, 33. The Form of Notice is attached to the
27 Agreement (Exhibit 1) as Exhibit A.
28

1 **D. Class Notice**

2 The proposed Notice of Class Action Settlement will be disseminated through direct mail
3 to the last known address for each Settlement Class Member. It informs the Settlement Class
4 Members of the terms of the settlement and their right to be excluded from the Settlement. And
5 if there are Settlement Class Members who wish to object to this proposed class action
6 settlement, they will have the opportunity to file their objections and be heard at the Final
7 Approval Hearing.
8

9 The Notice also summarizes the proceedings to date and the terms and conditions of the
10 proposed Settlement, in an informative and coherent manner, in compliance with the Manual for
11 Complex Litigation (Third Ed.) (Fed. Judicial Center 1995), § 30.211. It makes clear that the
12 Settlement does not constitute an admission of liability by the Defendant, and recognizes that
13 this Court has not ruled on the merits of the action. It also states that the final settlement
14 approval decision has yet to be made.

15 **E. Settlement Payments**

16 Each Class Member's settlement, as applicable, will be divided in the following manner:
17 Forty-five percent (45%) to wages, which will be calculated and payable to all Settlement Class
18 Members will be subject to withholding, including the employee's portion of FICA, FUTA, SDI,
19 and any other mandated taxes withholding, as to which each Settlement Class Member shall be
20 issued a Form W-2 by the Settlement Administrator; 15% to Waiting Time (Labor Code §203)
21 Penalties, which will only be paid to former employee Settlement Class Members and as to
22 which each such Settlement Class Member shall be issued a Form 1099 INT by the Settlement
23 Administrator if such issuance is required by law; and, finally, 40% to penalties and interest,
24 which shall be paid to all Settlement Class Members and as to which each Settlement Class
25 Member shall be issued a Form 1099 INT by the Settlement Administrator if such issuance is
26 required by law. The Defendant shall pay the employer's share of payroll taxes, and
27 contributions shall be paid by Defendant from its separate funds. Agreement, ¶31.
28

1 **F. Stipulation to Class Certification and Approval of Settlement**

2 Plaintiffs now respectfully move this Court to: (a) preliminarily approve the proposed
3 class action settlement, (b) appoint Plaintiffs as the Class Representatives for purposes of this
4 settlement, (c) appoint the law firms of Smoger & Associates, Arbogast Law, A Professional
5 Corporation, the Law Office of Arthur R. Siegel and Jaret & Jaret as Class Counsel for
6 settlement purposes, (d) approve the proposed Notice of Class Action Settlement in the form
7 attached as Exhibit A to the Agreement (Siegel Decl., Ex. 1A), (e) approve the procedures for
8 opting out and objecting to the settlement set forth in the Notice of Class Action Settlement, (f)
9 direct Defendant to furnish the Administrator within 15 days after the Court grants preliminary
10 approval of the Settlement the names and last known addresses, Social Security numbers and
11 telephone numbers of all Class Members, as well as any other information the Administrator
12 may reasonably need to provide notice of this Settlement, and (g) set a Final Approval Hearing.
13 Defendant, through its counsel, has agreed that it does not oppose Plaintiffs' motion for class
14 certification and that the Proposed Settlement Class satisfies each of the requirements for class
15 certification of Code of Civil Procedure section 382.
16

17 **IV. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE CLASS**
18 **ACTION SETTLEMENT**

19 **A. Class Action Settlements Are Subject to Review and Approval Under California**
20 **Law**

21 A class action may not be dismissed, compromised, or settled without approval of the
22 Court. *See* Civ. Code § 1781(f); Cal. Rule of Court 3.769; Fed. Rule Civ. Proc. 23(e). Proper
23 review and approval of a class action settlement requires three steps: (1) preliminary approval of
24 the proposed settlement after submission of a written motion; (2) dissemination of mailed and/or
25 published notice of the settlement to all class members; and (3) a formal fairness hearing, or final
26 settlement approval hearing, at which class members may be heard regarding the settlement, and
27 at which evidence and argument concerning the fairness, adequacy, and reasonableness of the
28

1 settlement is presented. Rule of Court 3.769; David F. Herr, Manual for Complex Litigation §
2 21.61 (4th ed. 2012) ("Manual"). This procedure, commonly used by California courts,
3 safeguards class members' procedural due process rights and enables the court to fulfill its role as
4 the guardian of class members' interests. *See* Alba Conte & Herbert B. Newberg, 4 Newberg on
5 Class Actions § 11:22, et seq. (4th ed. 2002) ("Newberg").

6
7 The decision to approve or reject a proposed settlement is committed to the sound
8 discretion of the court. *See* Kullar v. Foot Locker Retail, Inc., 168 Cal. App. 4th 116, 128
9 (2008); Wershba v. Apple Computer, Inc., 91 Cal. App. 4th 224, 234-35 (2001). Accordingly, a
10 decision approving a class action settlement may be reversed only upon a strong showing of
11 clear abuse of discretion. *See* Kullar, 168 Cal. App. 4th at 128; Hanlon v. Chrysler Corp., 150
12 F.3d 1011, 1027 (9th Cir. 1998).

13 Plaintiffs request that the Court take the first step in the settlement approval process, and
14 grant preliminary approval of the proposed Settlement. The purpose of the preliminary
15 evaluation of class action settlement is to determine only whether the proposed settlement is
16 within the "range of reasonableness," and whether and how notice to the class of the terms and
17 conditions of the Settlement may be given, and whether the scheduling of a formal fairness
18 hearing, is worthwhile. *See* Wershba, 91 Cal. App. 4th at 234-35; 4 Newberg § 11:25. In this
19 matter, Class Counsel has provided information exceeding the threshold required to provide this
20 Court with "an understanding of the amount that is in controversy and the realistic range of
21 outcomes of the litigation." *See*, generally, Siegel and Grau Declarations, and discussion at
22 IV.B.2 *infra*.

23 Plaintiffs further request that the Court provisionally and conditionally certify the
24 proposed Settlement Class as defined above. Provisional and conditional class certification is
25 appropriate at the preliminary approval stage where, as here, the proposed class as it is defined in
26 the parties' Settlement Agreement has not previously been certified by the Court, and the
27 requirements for certification are met. *See* 4 Newberg § 11:22, et seq. The practical purpose of
28

1 provisional and conditional class certification is to facilitate distribution of notice to the class of
2 the terms of the proposed settlement and the date and time of the final approval hearing. *See*
3 Rule of Court 3.769; Manual § 21.632. The additional rulings sought on this motion - approving
4 the form, content, and distribution of the Class Action Settlement Notices and scheduling a
5 formal fairness hearing - facilitate the settlement approval process, and are also typically made at
6 the preliminary approval stage. *See* Rule of Court 3.769.

7
8 Having presented the materials and information necessary for preliminary approval, the
9 parties request that the Court preliminarily approve the settlement, authorize notice to the Class
10 and set a Final Approval Hearing.

11 **B. The Settlement Should Be Given Preliminary Approval as It Is Fair, Reasonable,**
12 **Adequate, and the Product of Investigation, Litigation, and Arms-Length**
13 **Negotiation**

14 **1. Applicable Standard**

15 At the preliminary approval stage, the court has broad powers to determine whether the
16 proposed settlement is fair under the circumstances of the case. *See Wershba*, 91 Cal. App. 4th
17 at 234-35; *Mallick v. Super. Ct.*, 89 Cal. App. 3d 434, 438 (1979). Preliminary approval is
18 warranted if the settlement falls within “the range of reasonableness.” *See N. County*
19 *Contractor's Ass'n., Inc. v. Touchstone Ins. Servs.*, 27 Cal. App. 4th 1085, 1089-90 (1994);
20 *Chavez v. Netflix, Inc.*, No. CGC-04-434884, 2005 WL 3048041, at *1 (S.F. County Super. Ct.
21 Oct. 27, 2005); 4 Newberg § 11:25.

22 For preliminary approval, the court makes an “initial evaluation” of the fairness of the
23 proposed settlement on the basis of written submissions and informal presentation from the
24 settling parties. *See* Manual § 21.632. To make the fairness determination, the court must
25 consider several factors, including “the strength of plaintiffs' case, the risk, expense, complexity
26 and likely duration of further litigation, the risk of maintaining class action status through trial,
27 the amount offered in settlement, the extent of discovery completed and the stage of the

1 proceedings, [and] the experience and views of counsel.” Kullar, 168 Cal. App. 4th at 128
2 (quoting Dunk v. Ford Motor Co., 48 Cal. App. 4th 1794, 1801 (1996)). The court may consider
3 other factors as well when balancing and weighing the circumstances of each case with the
4 settlement terms proposed. See Wershba, 91 Cal. App. 4th at 245. The court must ensure that
5 “the agreement is not the product of fraud or overreaching by, or collusion between, the
6 negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to
7 all concerned.” Hanlon, 150 F.3d at 1027.

8
9 The California standard for approval of class settlements is similar to the federal
10 standard: the settlement should be fair, reasonable, and adequate for class members overall.
11 Dunk, *Supra*, at 1801. Accordingly, in making the fairness determination in this case, the Court
12 should consider “the strength of the plaintiffs' case, the risk, expense, complexity and likely
13 duration of further litigation, the risk of maintaining class action status through trial, the amount
14 offered in settlement, the extent of discovery completed and the stage of the proceedings, [and]
15 the experience and views of counsel. . . .” *Id.* A presumption of fairness exists where: (1) the
16 settlement is reached through arm's-length bargaining; (2) investigation and discovery are
17 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
18 litigation; and (4) the percentage of objectors is small. *Id.* at 1802; Wershba, 91 Cal. App. 4th at
19 245.

20 The court should view these factors and, in its final analysis, ensure that the proposed
21 settlement represents a reasonable compromise given the magnitude and apparent merit of the
22 claims being released, discounted by the risks and expenses of attempting to establish and collect
23 on those claims by pursuing the litigation. Kullar, *Supra*, 168 Cal. App. 4th at 129. The
24 information that the Court needs to perform this analysis in this case is contained in this
25 Memorandum of Points and Authorities, and in the accompanying Declarations of Arthur R.
26 Siegel and Steve Grau.

27 **2. The Settlement Terms Are Within the Range of Reasonableness**

1 Given the potential exposure or liability, the strength of Defendants' factual and legal
2 defenses, and the Defendant's strained financial condition, this Settlement is within the range of
3 reasonableness, and will result in a substantial benefit to all Settlement Class Members.

4 The Settlement Class Members will share in a Net Settlement Amount of approximately
5 \$358,833.33, after deductions for attorneys' fees and costs, class representative service payments,
6 penalty payment to the State, and settlement administration costs. As stated in the Declarations
7 of Arthur R. Siegel and Steve Grau, ~~this is~~ both the gross and this net amount are reasonable
8 sums given the difficult circumstances presented by this case.

9 As described herein, Class Counsel diligently pursued an investigation of the claims of
10 Settlement Class Members against Defendant. In addition, all of Plaintiffs' counsel convened in
11 San Francisco, with a Certified Public Accountant retained by Plaintiffs' counsel, and met with
12 Defendant's counsel and accountant and were shown tax returns and other information about the
13 financial condition of Defendant.

14 Based on an investigation and evaluation, and in light of all known facts and
15 circumstances, including the risk of significant delay, the difficulty of the claims and the risk that
16 a Class may not be certified, the continuing uncertainty of the law regarding the scope of an
17 employer's duty to provide meal periods following the California Supreme Court's decision in
18 Brinker Rest. Corp. v. Super. Ct., 53 Cal. 4th 1004 (2012), the degree of risk involved in further
19 litigation and the risks faced by Plaintiffs in attempting to collect upon any judgment entered in
20 their favor after trial, Class Counsel are of the opinion that the Settlement with Defendants for
21 the consideration and on the terms set forth in this Settlement is fair, reasonable, and adequate,
22 and is in the best interest of the Settlement Class Members.

23
24 **3. The Settlement Agreement Is the Product of Informed, Arm's-Length Negotiations**

25 California courts recognize that "a presumption of fairness exists where . . . [a] settlement
26 is reached through arm's-length bargaining." Wershba, 91 Cal. App. 4th at 245; *see also* Clark v.
27 Am. Residential Servs. LLC, 175 Cal. App. 4th 785, 799 (2009). The settlement in this matter

1 was reached only with the assistance of a skilled professional mediator. On April 29, 2013 and
2 August 6, 2013, the Parties participated in two full day mediations with Mark S. Rudy. Siegel
3 Decl., ¶¶ 6,7. Class Counsel have considerable experience in class litigation and have
4 demonstrated competence with litigating wage and hour claims. (Siegel Decl., Jaret Decl.,
5 Bronson Decl.) Prior to the lengthy settlement negotiations, the Parties conducted extensive
6 informal discovery and exchanged substantial amounts of data enabling Counsel to make an
7 informed decision as to the merits of the Settlement. Class counsel also conducted interviews of
8 numerous potential witnesses and communicated with numerous members of the Settlement
9 Class. Siegel Decl., ¶¶ 4, 5, Jaret Decl. ¶ 8.

11 Furthermore, information obtained from Class Counsel's investigation of the case, as
12 summarized above, informed Class Counsel's assessment of the strengths and weaknesses of the
13 case and the benefits of the proposed Settlement under the circumstances of this case. *See, e.g.,*
14 Lewis v. Starbucks Corp., No. 2:07-cv-00490-MCE-DAD, 2008 WL 4196690, at *6 (E.D. Cal.
15 Sept. 11, 2008) ("approval of a class action settlement is proper as long as discovery allowed the
16 parties to form a clear view of the strengths and weaknesses of their cases").

17 **4. The Proposed Stipulation of Settlement Is Fair and Reasonable in Light of the**
18 **Parties' Respective Legal Positions**

19 A settlement is not judged against what might have been recovered had a plaintiff
20 prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair
21 and reasonable. Wershba, 91 Cal. App. 4th 224, 246, 250. ("Compromise is inherent and
22 necessary in the settlement process...even if the relief afforded by the proposed settlement is
23 substantially narrower than it would be if the suits were to be successfully litigated, this is no bar
24 to a class settlement because the public interest may indeed be served by a voluntary settlement
25 in which each side gives ground in the interest of avoiding litigation.")

26 Plaintiffs believe that this case is suitable for class certification in that there were
27 company-wide practices that affected Defendant's Ambulance Drivers which could be

1 established using data from Defendant and representative testimony and declarations from class
2 members. Siegel Decl., ¶ 11. However, while Plaintiffs assert that this is a suitable case for
3 certification, Plaintiff realizes that there is always a significant risk associated with class
4 certification proceedings. Siegel Decl., ¶¶ 20, 21. In light of the uncertainties of protracted
5 litigation and the probable difficulties in collecting a judgment in substantial excess of the
6 settlement amount, the settlement amount reflects the best practicable recovery for the Class
7 Members. The settlement amount is, of course, a compromise figure. By necessity it took into
8 account risks related to liability, damages, and all the defenses asserted by the Defendant. Siegel
9 Decl., ¶¶ 30 to 41. Moreover, each Class Member will be given the opportunity to opt-out of the
10 Settlement, allowing those who feel they have claims that are greater than the benefits they can
11 receive under this Settlement to pursue their own claims. Siegel Decl., ¶ 12.

13 The Gross Settlement Amount represents more than the risk adjusted recovery at this stage in
14 the litigation. In fact, Plaintiffs believe that the risk-adjusted settlement exceeds the expected
15 value of the case at this point in time. Siegel Decl., ¶¶ 30, 31. On that basis, it would be unwise
16 to pass up this settlement.

17 Analyzing the claims in this matter, Plaintiffs have concluded that the value of this
18 Settlement is fair, adequate and reasonable based upon the following calculations and risk
19 adjustments:

20 With respect to the principal claims, had the case proceeded to judgment with all claims
21 adjudicated 100% in favor of the Class, the estimated liability for overtime damages could have
22 been as high as \$1.175 million. Premiums for missed meal and rest breaks could have reached
23 approximately \$668,000 and \$829,000 respectively. Labor Code §203 Waiting Time penalties
24 were calculated at \$900,000. Penalties for inaccurate wage statements could have reached
25 \$261,000. PAGA penalties of \$1.78 Million could have been assessed, along with \$442,000 in
26 interest. Siegel Decl., ¶ 14. While Class Counsel felt they had a strong case, there were also
27

1 facts which, if interpreted in Defendant's favor in the litigation, would have significantly reduced
2 the maximum amounts recited above.

3
4 Defendant presented evidence that there had been an Alternate Workweek Election in
5 December, 2009 for the work unit consisting of "all non-exempt employees classified as EMT's
6 and employed in the Company's San Leandro and San Jose, California offices." In that election,
7 Defendant claimed the unit adopted an alternate workweek. The documentation presented
8 showed the workweek adopted called for a four day workweek of 10 hour days with no overtime
9 for work performed within that schedule. Defendant further produced numerous individual
10 "Alternate Work Week Schedule, Overtime and 24-Hour Shift Agreements". Election
11 documents and representative exemplars of employee Agreements at Siegel Decl., Ex. 3. These
12 agreements (which stated that they were intended to comply with I.W.C. Order No. 9-2001,
13 §3(K) and other legal authority), if accepted by the Court as controlling, would have obviated
14 claims for meal period premium pay, and daily and weekly overtime. Defendant claimed, and
15 the documentation tended to show, that a number of the Class Representatives had signed these
16 agreements. Siegel Decl., ¶16.

17 Class counsel questioned the claimed election, in substantial part because the required
18 submission to the California Division of Labor Statistics and Research for the 2009 claimed
19 election did not occur until April 13, 2012, accompanied by a letter from Ms. Eve Grau
20 (representing herself as Defendant's "new HR manager" and claiming that she had just come
21 across the documentation of the election and therefore was only then, over two years later,
22 submitting it for recording. Siegel Decl., ¶ 17.

23 Counsel also questioned the Alternate Work Week Agreements, in part because few of
24 the signatories recalled signing them. However, in evaluating the risk of litigation on these
25 points, counsel had to factor in the possibility that the election and the Agreements would be
26 credited by the trier of fact, resulting in the elimination or substantial reduction of major parts of
27 the Class's claimed losses. Siegel Decl., ¶18.

1 Finally, Class Counsel took into account the representations of Defendant regarding the
2 likelihood that a larger settlement would put it out of business in light of its assets and its
3 reduced expectations for profit in the type of ambulance service it provided in the Affordable
4 Care Act era. The possibility of obtaining a judgment much larger than the settlement had to be
5 evaluated in light of possible problems with collection, including bankruptcy. The possibility
6 that Defendant, a relatively small enterprise, could go out of business as a result of the litigation,
7 resulting in the loss of the jobs of all the currently employed class members, was represented by
8 Defendant as a real possibility. As recited above, Defendant allowed examination of financial
9 records and tax returns to support its contentions.
10

11 Defendant Royal has represented that it did not, at the time the settlement was negotiated
12 and does not now have sufficient cash reserves or assets to pay more than \$650,000 and stay in
13 business. Royal's CEO and 90% shareholder calculated that the anticipated costs to Royal to
14 litigate this matter through trial would drive Royal out of business and Royal will file for
15 bankruptcy if this settlement is not approved. In preparation for this possibility, Royal has
16 retained bankruptcy counsel. Further, this would result in the termination of 154 employees.
17 (Decl. of Steve Grau, ¶¶2, 6)

18 The result here is therefore exceptional in many respects. First, it is important to
19 recognize the willfulness finding required in Labor Code § 203, the largest potential liability
20 apart from the overtime and PAGA penalty claims, can be difficult to establish. Siegel Decl., ¶
21 23. Second, meal period claims have been increasingly difficult to certify in recent years. Siegel
22 Decl., ¶21.; see *Brinker, supra*). Third, the certification rates in California are substantially
23 lower than conventional wisdom holds. Notably, the estimated certification probabilities equal
24 or exceed by more than a factor of two the rate of certification in contested motions in California
25 between 2000 and 2006, based upon data available through the California Courts website. See,
26 Findings of the Study of California Class Action Litigation, 2000-2006, available at
27 <http://www.courts.ca.gov/documents/class-action-lit-study.pdf> Appendix C: Disposition
28

1 Analysis, at p. C11, Table C29 (finding that only 21.4% of all class actions were certified either
2 as part of a settlement or as part of a contested certification motion. 77.7% were disposed of
3 without being certified. In other words, well under 20% of all class actions were successfully
4 certified by way of a contested motion. *See also* Second Interim Report,
5 <http://www.courts.ca.gov/documents/classaction-certification.pdf> (showing certification rates for
6 wage and hour cases slightly higher than the mean for all class actions)
7

8 Additionally, wage statement claims have also seen high and low water marks in
9 their treatment at the appellate level. Compare, Jaimez v. DAIOHS USA, Inc., 181
10 Cal.App.4th 1286 (2010) with Price v. Starbucks Corp., 192 Cal.App.4th 1136 (2011) and
11 Morgan v. United Retail, 186 Cal. App. 4th 1136 (2010).

12 In determining the reasonableness of a settlement such as this, the courts have
13 taken into account issues of the settling defendant's solvency. In Kullar v. Foot Locker Retail,
14 Inc. (2008) 168 Cal.App.4th 116, 134, the Court analogized its role in approving class action
15 settlements to that of courts in approval proceedings for good faith settlements under Code of
16 Civil Procedure § 877.6, citing the seminal case of Tech-Bilt, Inc. v. Woodward-Clyde &
17 Associates (1985) 38 Cal.3d 488, at 499. That Court held that "Other relevant considerations
18 [in approving a settlement] include the financial conditions and insurance policy limits of
19 settling defendants." Or, as another court put it , if the settling defendant **"was the**
20 **proverbial turnip from which little if any blood was forthcoming in the event of an**
21 **adverse judgment"**, a settlement could be made in good faith on that basis. Aero-Crete,
22 Inc. v. Superior Court (Dale Village7 Apartment Co.) (1993) 21 Cal.App.4th 203, 208-09.

23 Class counsel's risk and exposure considerations, quantified as a percentage of risk and
24 resulting exposure, are summarized in the table below:
25
26
27

| Claim | Estimated Maximum Damages | Risk Factor for Certification | Risk Factor for Liability | Risk Factor for Collectibility | Exposure |
|-----------------|---------------------------|-------------------------------|---------------------------|--------------------------------|------------------|
| Overtime | \$1,175,000 | 0.5 | 0.6 | 0.2 | \$70,500 |
| Meal Periods | \$667,762 | 0.3 | 0.3 | 0.2 | 12,020 |
| Rest Periods | \$828,819 | 0.4 | 0.4 | 0.2 | \$26,522 |
| Waiting Time | \$900,047 | 0.4 | 0.6 | 0.2 | \$43,202 |
| Wage Statements | \$261,000 | 0.6 | 0.6 | 0.2 | \$18,792 |
| Interest | \$442,442 | N/A | 0.3 | 0.2 | \$26,547 |
| PAGA Penalties | \$1,782,800 | N/A | 0.1 | 0.1 | \$17,828 |
| Totals | \$6,057,870 | | | | \$215,405 |

If the case did not settle, and if these estimates of risk then turned out to accurately reflect the result of litigation and collection, the recovery for the Class would be substantially less than the settlement amount reached through mediation and negotiation, \$650,000. Siegel Decl., ¶¶ 30,31

5. The Extent of Discovery and Investigation Completed and the State of Proceedings Support Preliminary Approval

Courts typically assess the status of discovery in determining whether a class action settlement agreement is fair, reasonable, and adequate. Dunk, 48 Cal. App. 4th at 1800. Prior to this settlement being reached, the parties exchanged extensive information and documents. The settlement was accomplished after thorough review and analysis of the data produced by Defendant. Both sides had also invested in significant factual and legal research, numerous discussions and exchanges of correspondence, review of policies, and arm's-length settlement

1 negotiations. In addition to the exchanges of information before the mediation, the parties shared
2 additional information during and after the mediation. Siegel Decl., ¶¶ 4, 5, 6.

3
4 Ultimately, both parties agreed on a non-reversionary class wide settlement in a total amount
5 of \$650,000, payable over two years. Siegel Decl., Exhibit 1.

6 **6. Enhancement Payments To Plaintiffs**

7 In light of Paragraph 11 of this Court's Procedural Guidelines for Preliminary Approval
8 of Class Action Settlements, it is Plaintiffs' understanding that the reasonableness of the
9 proposed enhancement payments will not be before the court at this time, and will not be
10 adjudicated unless and until a final approval hearing.

11 At that time, we will demonstrate to the Court that these payments, which consist of a
12 total amount of \$32,000 for the six named Plaintiffs and Class Representatives, are completely
13 reasonable in light of their participation in the litigation and the risks they faced by their
14 involvement in it.

15 **7. Settlement of Penalties Under the Private Attorney General Act is Reasonable**

16 The claim under PAGA was part of the parties' negotiations during the mediation. One
17 basis of the PAGA claim was the contention that each time a paycheck with paystub was
18 issued to a Class Member without accounting for overtime hours worked, a PAGA penalty was
19 assessable. Penalties range from \$50 for the first violation and \$100 per subsequent violation,
20 to \$100/\$200 per pay period, per worker for other violations. Other penalties were calculated
21 for overtime violations and Like Plaintiffs' other liability contentions, this claim was disputed
22 by Defendants. The statute of limitations on this claim is one year before the filing of the
23 lawsuit, i.e., from May 24, 2011, based on the California Supreme Court's decision in Murphy
24 v. Kenneth Cole Productions, Inc. (2007) 40 Cal.4th 1094.

25 Using the number of pay periods in this one year period, and accounting for six possible
26 different PAGA penalties, for all but the first pay period in the PAGA liability period, this
27 would have resulted in penalties of \$700 for each employee on each payday during the liability
28

1 year. This estimate also assumed that each violation after the first would be doubled as a
2 “subsequent violation” under the statute. With this “dripping wet” assessment of PAGA
3 liability, Plaintiffs calculated ~~the gross~~ a wishful gross amount of recoverable PAGA penalties
4 at **\$1,782,800**. However, there would have been legal challenges to many if not all of the
5 claimed penalties. For instance, Labor Code § 2699(f) provides “gap-filler penalties” to
6 aggrieved employees except for violations for which a civil penalty is specifically provided,
7 and at least one court has held that the existence of the Labor Code § 226.3's civil penalties
8 forecloses the possibility of pursuing a claim for the same Labor Code § 226(a) violations
9 under PAGA. Wert v. U.S. Bancorp et al, U.S. Dist. Court, SD California June 23, 2014, 2014
10 WL 2860287

11
12 One court has held that doubling of Labor Code penalties from their initial levels to
13 their doubled levels for “subsequent violations” should be reserved for cases where the
14 employer was on notice of the violation and then persisted in it. Amaral v. Cintas Corp. No. 2,
15 163 Cal. App. 4th 1157, 1209 (2008). While Plaintiffs would have argued against that
16 interpretation, it is certainly possible that the claimed penalties would have been drastically
17 reduced, even assuming each and every Class Member was eligible for the penalties to begin
18 with.

19 Importantly, under PAGA, the LWDA would have received 75% of this amount. As the
20 Plaintiffs’ recovery is reduced by their attorney fees in the amount of 30% of the recovery, the
21 LWDA's recovery should bear a similar burden. The LWDA’s share assumes a 100% certain
22 recovery, whereas the class' settlement represents a reduction of the class’ gross damages claim
23 to discount for the litigation, certification and collectibility risks in the trial court and on
24 appeal. A compelling argument can and should be made that a greater discount must be
25 applied to the value of the penalty claim. To recover at trial, the employee Class Members
26 need only establish that they worked hours payable at overtime rates, or that they were not
27 given proper breaks, and then they can recover whatever damages are proved to the trier of
28

1 fact. This is not true for a PAGA penalty claim. Under Labor Code § 2699(e)(2), even if the
2 Labor Code is violated, penalties are not recoverable where it would be "unjust, arbitrary and
3 oppressive, or confiscatory." Even if the Court were to award overtime, it does not follow that
4 the Court would refuse to credit Defendant's arguments and rationale for having failed to do.
5 Stated differently, it is highly possible for the class to recover overtime damages but fail to
6 recover PAGA penalties. In light of Defendant's relatively small size and limited means,
7 Plaintiffs submit that there was a chance that a court would not issue a PAGA penalty against
8 the Defendants in this case. In the particular circumstances of this case, the allocation of
9 \$10,000 to the LWDA in settlement of the PAGA claim has a substantial and rational basis.
10 This is particularly so where, as here, the LWDA has decided to take no action on its own, and
11 there would have been no recovery at all for the LWDA but for Plaintiffs' litigation efforts.
12 Siegel Decl., ¶¶24-27.

14 The settlement of the claim for penalties under PAGA is reasonable under the
15 circumstances. Under PAGA, California Labor Code Section 2698, et seq., the Labor Workforce
16 and Development Agency is entitled to 75% of any settlement of civil penalties awardable under
17 the Labor Code. See Lab. Code § 2699(i). Defendant offered the amount of \$10,000 in
18 settlement for the PAGA penalties as part of Defendants' overall offer after extensive negotiations
19 and Plaintiffs accepted that final offer as a reasonable settlement of each of these claims. Where
20 settlements "negotiate[] a good faith amount" for PAGA penalties and "there is no indication that
21 this amount was the result of self-interest at the expense of other Class Members," such amounts
22 are generally considered reasonable. Hopson v. Hanesbrands Inc., No. CV-08-0844 EDL, 2009
23 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009).

24 **8. Attorneys Fees**

25 In light of Paragraph 12 of this Court's Procedural Guidelines for Preliminary Approval
26 of Class Action Settlements, it is Plaintiffs' understanding that the reasonableness of the
27

1 Plaintiffs' attorneys' fees award will not be before the court at this time, and will not be
2 adjudicated unless and until the final approval hearing.

3
4 At that time, proposed Class Counsel will demonstrate to the Court that the negotiated
5 attorneys fee of 33.3% of the Gross Settlement Amount is fair and reasonable under the
6 circumstances of this case.

7 **V. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

8 **A. Legal Standard**

9 The proposed Settlement Class is well suited for class certification. All of the claims
10 derive from a core set of alleged violations of California's wage and hour laws and regulations.
11 For the reasons set forth more fully below, the Class satisfies the prerequisites for certification
12 under Code of Civil Procedure § 382. Section 382 provides that "[w]hen the question is one of a
13 common or general interest, of many persons, or when the parties are numerous, and it is
14 impracticable to bring them all before the court, one or more may sue or defend for the benefit of
15 all." There are two requirements to § 382: "(1) There must be an ascertainable class; and (2)
16 there must be a well-defined community of interest in the questions of law and fact involved
17 affecting the parties to be represented." Daar v. Yellow Cab Co., 67 Cal. 2d 695, 704 (1967)
18 (citations omitted). To clarify these requirements, the California Supreme Court has looked to
19 Federal Rule of Civil Procedure 23 to explain that the community-of-interest requirement itself
20 embodies three factors: "(1) predominant questions of law or fact; (2) class representatives with
21 claims or defenses typical of the class; and (3) class representatives who can adequately
22 represent the class." Richmond v. Dart Indus., Inc., 29 Cal. 3d 462, 470 (1981).

23 California law and policy favor the fullest and most flexible use of the class action
24 device. Richmond, 29 Cal.3d at 469-473. Indeed, "Courts long have acknowledged the
25 importance of class actions as a means to prevent a failure of justice in our judicial system"
26 particularly where the rights of consumers are at issue. Linder v. Thrifty Oil Co., 23 Cal. 4th
27

1 429, 434, 445 (2000). Any doubt as to the appropriateness of class treatment should be resolved
2 in favor of certification. Richmond, 29 Cal. 3d at 473-475.

3
4 **B. The Criteria For Class Certification Are Satisfied**

5 **1. An Ascertainable Class Exists Which Is So Numerous That Joinder**
6 **Of All Members Is Impracticable**

7 Here, the members of the Settlement Class are ascertainable through the Defendant's own
8 records. *See* Rose v. City of Hayward, 126 Cal. App. 3d 926, 932 (1981) (finding that "[c]lass
9 members are 'ascertainable' where they may be readily identified without unreasonable expense
10 or time by reference to official records"). Defendant will compile the necessary information to
11 identify the Settlement Class Members and gather and organize the dates in each class position,
12 dates of termination, gross wages paid and last-known addresses for its current and former
13 employees. The ascertainability requirement is thus met.

14 **2. The Numerosity Requirement Is Satisfied**

15 The numerosity requirement is met if the class is so large that joinder of all members
16 would be impracticable. *See* Gentry v. Super. Ct., 42 Cal. 4th 443, 460 (2007); Bell v. Farmers
17 Insurance Exchange, 115 Cal.App.4th 715, at 745(2004). Defendant's records show that there
18 will be approximately 600 Settlement Class Members. Joinder of all of these individuals would
19 be impracticable, and a class-wide proceeding is preferable and superior because this number is
20 sufficiently large. Cf. Hebbard v. Colgrove, 28 Cal. App. 3d 1017, 1030 (1972) (certifying class
21 with only 28 members); Rose, 126 Cal. App. 3d at 934 (class of 42 sufficiently numerous);
22 B.W.I. Custom Kitchen v. Owens-III., Inc., 191 Cal. App. 3d 1341, 1354 (1987) (ordering trial
23 court to certify class involving "several thousand class members").

24 **3. The Commonality Requirement is Met**

25 The commonality requirement is met when there are questions of law and fact common to
26 the class. *See* Sav-On Drug Stores, Inc. v. Superior Court, 34 Cal. 4th at 326-27; Hanlon, 150
27 F.3d at 1019. Commonality requires only that common legal or factual questions predominate;
28

1 the Plaintiffs need not show that all issues in the litigation are identical. *See Sav-On*, 34 Cal. 4th
2 at 328, 332-33; *Richmond*, 29 Cal. 3d at 473. Here, the issues of law and fact common to all
3 Settlement Class Members satisfy this standard. As set forth below, the issues that may be
4 jointly tried with respect to Plaintiffs' claims, "when compared with those requiring separate
5 adjudication, are so . . . substantial that maintenance of a class action would be advantageous to
6 the judicial process and to the litigants." *Sav-On*, 34 Cal. 4th at 326. Where the defendant
7 employer's policies or conduct is uniformly directed at a class of employees, as it is here, the
8 class-wide impact of the defendant's policies satisfies the commonality requirement. *See Sav-*
9 *On*, 34 Cal. 4th at 331 (upholding class certification, where the common issue was whether the
10 employer properly classified grocery store managers as exempt from California's overtime
11 requirements); *Vasquez*, 4 Cal. 3d at 810-11; *Stephens v. Montgomery Ward & Co., Inc.*, 193
12 Cal. App. 3d 411, 421 (1987).

14 Here, the employment practices at Royal Ambulance that are alleged by Plaintiffs to be
15 unlawful are: 1) failure to pay proper overtime wages; 2) failure to provide proper meal and rest
16 periods; and 3) Various actions giving rise to penalties flowing from these violations. The basic
17 factual and legal issues arising from these allegations are the same for all of the identified
18 Settlement Class Members. Furthermore, most Settlement Class Members suffer from, and seek
19 redress for, the same alleged injuries. The only exception is that Settlement Class Members who
20 are still presently employed cannot seek Labor Code §203 penalties, and the parties have
21 negotiated a separate Waiting Time Penalty payment only for former employees.

22 **4. Plaintiffs' Claims Are Typical of the Claims of the Class**

23 Class representatives' interests need not be identical to other class members; to be typical,
24 plaintiffs and class members need only be similarly situated. *B.W.I. Custom Kitchen*, 191 Cal.
25 App. 3d at 1347. The typicality requirement does not focus on the personal characteristics of the
26 representative plaintiff or her individual circumstances with respect to the class, but rather upon
27 the typicality of the proposed representative's claims as they relate to the defendant's conduct and
28

1 activities. See Classen v. Weller, 145 Cal. App. 3d 27, 46 (1983) ("[t]he only requirements are
2 that common questions of law and fact predominate and that the class representative be similarly
3 situated" vis-à-vis the class). A representative plaintiff's claim is typical if it arises from the
4 same event, practice, or course of conduct that gives rise to the claims of other class members,
5 and if his or her claims are based on the same legal theory. *Id.*

6
7 Like all Settlement Class Members, the named Plaintiffs alleged damages as a result of
8 the alleged violations of California's wage and hour laws and regulations related to overtime
9 wages and meal and rest period violations. Since all members of the Settlement Class would
10 need to demonstrate the same elements to recover on their claims (with the exception noted
11 above), their interests are sufficiently aligned that the proposed Class Representatives can be
12 expected to adequately pursue the interests of the absentee Settlement Class Members. *See*
13 Wehner v. Syntex Corp., 117 F.R.D. 641, 644 (N.D. Cal. 1987). Factual differences may exist
14 between the class representative and the class members so long as the claims arise from the same
15 events or course of conduct and are based on the same legal theories. Hanlon, 150 F.3d at 1020;
16 *see also* Wehner, 117 F.R.D. at 644; B.W.I. Custom Kitchen, 191 Cal. App. 3d at 1347 (1987).

17 **5. Plaintiffs and Their Counsel Meet the Adequacy Requirement**

18 The adequacy of representation requirements is met by fulfilling two conditions: first, a
19 named plaintiff must be represented by counsel qualified to conduct the pending litigation;
20 second, a named plaintiff's interests cannot be antagonistic to those of the class. McGhee v.
21 Crocker-Citizens Nat. Bank, 60 Cal. App. 3d 442, 451 (1976). Plaintiffs here meet both of these
22 requirements. They have no conflicts, and Plaintiffs have, with counsel, litigated this case for
23 over two years, showing their dedication. Soc. Servs. Union, Local 535 v. Cnty. of Santa Clara,
24 609 F.2d 944, 946-47 (9th Cir. 1979); Kelley v. SBC, Inc., No. 97-CV-2729 CW, 1998 WL
25 1794379, at *15 (N.D. Cal. Nov. 18, 1998).

26 As shown by counsel's declaration filed herewith, Plaintiffs retained counsel with
27 extensive experience in prosecuting complex class actions, including class actions like this one

1 which were previously settled. (Siegel, Jaret, and Bronson Decls.) With their combined
2 experience, Class Counsel unquestionably are "qualified, experienced and generally able to
3 conduct the proposed litigation." Miller v. Woods, 148 Cal. App. 3d 862, 875 (1983). In
4 addition, Plaintiffs' interests are co-extensive with those of the Settlement Class, since all have
5 allegedly been injured in the same manner by Royal Ambulance, and Plaintiffs seek relief
6 identical to that sought by every other Settlement Class member. Moreover, Plaintiffs'
7 agreement to serve as representatives demonstrates their serious commitment to bringing about
8 the best results possible for fellow settlement Class Members. McGhee, 60 Cal.App.3d at 451.
9 Finally, any Settlement Class Member who wishes to opt out of the Settlement to pursue his or
10 her own individual claims may do so. *See* Hanlon, 150 F.3d at 1020-21.

12 **6. A Class Action is Superior to a Multiplicity of Litigation.**

13 Class certification is authorized where common questions of law and fact predominate
14 over individual questions, and where classwide treatment of a dispute is superior to individual
15 litigation. *See* Sav-On, 34 Cal. 4th at 326; Richmond, 29 Cal. 3d at 469. When assessing
16 predominance and superiority, a court may consider that the class will be certified for settlement
17 purposes only and that manageability of trial is therefore irrelevant. Amchem Prods., Inc. v.
18 Windsor, 521 U.S. 591, 620 (1997). The test is whether proposed classes are sufficiently
19 cohesive to warrant adjudication by representation. *See* Hanlon, 150 F.3d at 1022. The
20 Settlement Class in this case is sufficiently cohesive, since all members share a "common
21 nucleus of facts and potential legal remedies." *See id.*

22 In making its class certification decision, the Court must determine that a class action
23 would be superior to alternative means for the fair and efficient adjudication of the litigation. By
24 consolidating close to 600 potential individual actions into a single proceeding, this Court's use
25 of the class action device enables it to manage this litigation in a manner that serves the
26 economics of time, effort and expense for the litigants and the judicial system. Absent class
27 treatment, similarly-situated employees with small but nevertheless potentially meritorious
28

1 claims for damages would, as a practical matter, have no means of redress because of the time,
2 effort and expense required to prosecute individual actions. *See e.g., Vasquez*, 4 Cal. 3d at 808;
3 Wilner v. Sunset Life Ins. Co., 78 Cal. App. 4th at 959 (2000). Moreover, in the context of
4 settlement, the superiority concerns are essentially non-existent.

5
6 Furthermore, particularly in the settlement context, class resolution is superior to other
7 available methods for the fair and efficient adjudication of the controversy. *See Hanlon*, 150
8 F.3d at 1023; Dunk, 48 Cal. App. 4th at 1807 n.19; Lewis v. Starbucks Corp., *Supra*, 2008 WL
9 4196690, at *4 ("as the parties have already agreed on a settlement, 'the desirability of
10 concentrating the litigation in one forum is obvious.'") (citation omitted). The superiority
11 requirement involves a "comparative evaluation of alternative mechanisms of dispute
12 resolution." Hanlon, 150 F.3d at 1023. Here, as in Hanlon, the alternative methods of resolution
13 are individual claims for a relatively small amount of damages. *See id.* These claims "would
14 prove uneconomic for [a] potential plaintiff[]" because "litigation costs would dwarf potential
15 recovery." *Id.*

16 The class action device can also conserve judicial resources by avoiding the waste and
17 delay of repetitive proceedings and prevent inconsistent adjudications of similar issues and
18 claims. *See NASDAQ Mkt.-Markers Antitrust Litig.*, 169 F.R.D. 493, 529 (S.D.N.Y. 1996)
19 (noting that the relevant inquiry is not individual versus class cases, but other methods for the
20 group-wide adjudication of a controversy). Class certification in this case will provide
21 substantial benefits to the litigants and the Arbitrator and/or Court. "[T]he alternative to a class
22 action is potentially [dozens or hundreds] of individual cases seeking damages unlikely to cover
23 the costs of litigation, and thus no tangible alternative remedy exists." Lewis v. Starbucks Corp.,
24 *Supra*, 2008 WL 4196690, at *4. A large number of repetitive individual cases would waste
25 judicial resources and could lead to inconsistent adjudications of similar monetary issues and
26 claims. Many class members with relatively small claims would likely decide not to bother
27 pursuing their claims at all. Aside from class treatment, a group-wide adjudication of unlawful
28

1 conduct is not available. Rather than having a multiplicity of proceedings, all involving
2 substantially the same issues and evidence, a class action allows these matters to be resolved
3 once on behalf of all claimants. For all these reasons, the Settlement Class should be certified.

4 **VI. PROPOSED NOTICE, APPROVAL, AND PAYMENT SCHEDULE**

5 **A. The Proposed Notice Plan Satisfies Due Process**

6 Notice requirements are set forth in the California Rules of Court. Cal. Rules of Court,
7 Rule 3.766 (e) and (f). California law vests the Court with broad discretion in fashioning an
8 appropriate notice program. Cartt v. Superior Court, 50 Cal. App. 3d 960, at 973-74 (1975).
9 There is no statutory or due process requirement that all Class Members receive actual notice,
10 but in this matter, the Settlement Class Members will receive direct mailed notice. As the Court
11 of Appeals has explained, "[t]he notice given should have a reasonable chance of reaching a
12 substantial percentage of the Class Members" Cartt, Supra at 974. In this case, notice of
13 the proposed settlement will be provided by direct mailing, the best possible form of notice.
14

15 **B. The Notice is Accurate and Informative**

16 In order to protect the rights of absent class members, the court must provide the best
17 notice practicable of a potential class action settlement. See Phillips Petroleum Co. v. Shutts,
18 472 U.S. 797, 811-12 (1985); Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 174-75 (1974). The
19 primary purpose of procedural due process is to provide affected parties with the right to be
20 heard at a meaningful time and in a meaningful manner. It does not guarantee any particular
21 procedure but rather requires only notice reasonably calculated to apprise interested parties of the
22 pendency of the action affecting their interests and an opportunity to present their objections.
23 Ryan v. Cal. Interscholastic Fed'n - San Diego Section, 94 Cal. App. 4th 1048, 1072 (2001).

24 The proposed Notice of Class Action Settlement, in the form attached to the Agreement
25 as Exhibit 1, should be approved for dissemination to the Settlement Class Members. It will be
26 disseminated through direct mail to the last known address for each Settlement Class Member. It
27 informs the Settlement Class Members of the terms of the settlement and their right to be
28

1 excluded from the Settlement. And if there are Settlement Class Members who wish to object to
2 this proposed class action settlement, they will have the opportunity to file their objections and
3 be heard at the Final Approval Hearing.
4

5 Rule 3.769(f) of the California Rules of Court provides as follows:

6 If the court has certified the action as a class action, notice of the final approval
7 hearing must be given to the class members in the manner specified by the court.

8 The notice must contain an explanation of the proposed settlement and procedures
9 for class members to follow in filing written objections to it and in arranging to
10 appear at the settlement hearing and state any objections to the proposed
11 settlement.

12 The Notice also fulfills the requirement of neutrality in class notices. 3 Newberg
13 § 8.39. It summarizes the proceedings to date and the terms and conditions of the proposed
14 settlement, in an informative and coherent manner, in compliance with the Manual for Complex
15 Litigation (Third Ed.) (Fed. Judicial Center 1995) ("Manual")'s statement that "the notice should
16 be accurate, objective, and understandable to Class Members ..." Manual, § 30.211. It makes
17 clear that the settlement does not constitute an admission of liability by the Defendant, and
18 recognizes that this Court has not ruled on the merits of the action. It also states that the final
19 settlement approval decision has yet to be made. Accordingly, the Notice complies with the
20 standards of fairness, completeness, and neutrality required of a combined settlement-
21 certification class notice. Fed. R. Civ. P. 23(c)(2), (e); 3 Newberg §§ 8:21, 8:39 (4th ed. 2002);
22 Manual § 21.312. Upon the Court's approval, the Notice of Class Action Settlement will be
23 mailed by the Administrator to each Settlement Class Member.

24 **VII. SCHEDULING A FINAL APPROVAL HEARING IS APPROPRIATE**

25 The implementation schedule proposed by the parties follows a specified sequence for the
26 relevant dates and deadlines, as set out in the Settlement Agreement. This schedule is
27 incorporated in the proposed Order lodged herewith.
28

1 This last step in the settlement approval process is the formal hearing, at which the Court
2 may hear all evidence and argument necessary to evaluate the proposed Settlement. At that
3 hearing, proponents of the Settlement may explain and describe its terms and conditions and
4 offer argument in support of settlement approval; Settlement Class Members, or their counsel,
5 may be heard in support of or in opposition to the Settlement Agreement. The parties request
6 that the hearing be held at the earliest date permitted by the terms of the Settlement.
7

8 The proposed implementation schedule is reasonable and feasible, and will provide
9 adequate time to carry out the various steps required by law for notice, opt-out and objection
10 rights, challenges to factual information regarding Class Members' employment, payment and
11 deposit of settlement funds, and making the payments involved.

12 Plaintiffs request a Final Approval Hearing date that is approximately 19 weeks after the
13 date of the Preliminary Approval Hearing, to allow 15 calendar days to provide information to
14 the Administrator, 10 business days for the Administrator to process and mail notices, 60 days
15 for the notice period, and at least 10 days for preparation of the motion for final approval.

16 The proposed schedule is as follows:

- 17 • Event: Hearing on Preliminary Approval: April 8, 2015
- 18 • Deliver information to Administrator: 15 days after Preliminary Approval
- 19 • Last day to mail notices: 30 days after Preliminary Approval
- 20 • Opt-out period ends: 30 days after mailing of notices (objections
21 accepted if postmarked by that date).
- 22 • Notice period ends: 31 days after mailing of notices
- 23 • Objection deadline: 9 court days before Final Approval Hearing.
- 24 • Final Approval Hearing: No sooner than 90 days after Class Notice is mailed.
- 25 Plaintiffs recommend a date 16 weeks after Hearing on Preliminary Approval
- 26 • Effective Date (no timely or non-withdrawn objections, no appeals): the date of
27

1 Final Approval (through an Order and Final Judgment) by the trial court. The
2 effective date will change if any class member objects and then appeals.

- 3 • Distributions must begin (no appeals): 30 days from Effective Date.
- 4 • Final Accounting: To be made upon completion of distribution: Final accounting
5 may be delayed if any class members required re-issued checks.

6 (Agreement, ¶¶19, 20, 21, 25, 2(g), 30, 33)

7 **VIII. CONCLUSION**

8 For all of the foregoing reasons, Plaintiffs respectfully request that this Court grant
9 preliminary approval, provisionally certify the proposed Settlement Class and approve the
10 proposed form of Notice.
11

12 DATED: March 17, 2015

13 Plaintiffs, Kevin Dickens, Patrick Oppido, Spencer Stecz,
14 Chris Hern, Phillip Jones and Proposed Class

15 By attorneys

16 **LAW OFFICES OF ARTHUR R. SIEGEL**

17 
18 _____
19 Arthur R. Siegel

1 **PROOF OF SERVICE**

2 I am a resident of the State of California, over the age of eighteen years, and not a party
3 to the within actions. My business address is Law Offices of Arthur R. Siegel, 351 California
4 Street, Suite 700, San Francisco, CA 94104. On March 17, 2015, I served the within
5 document(s):

6 Unopposed Notice of Motion and Motion for Preliminary Approval of Class Action Settlement
7 and Certification of Settlement Class; Memorandum of Points and Authorities in Support
8 Thereof

9 Declaration of Arthur R. Siegel in Support Of Motion For Preliminary Approval of Class Action
10 Settlement and Certification of Settlement Class

11 Declaration of Steven Bronson in Support of Motion For Preliminary Approval

12 Declaration of Robert S. Jaret in Support of Motion For Preliminary Approval of Class Action
13 Settlement

14 Declaration of Steve Grau in Support of Motion For Preliminary Approval of Class Action
15 Settlement

16 Declaration of Charles E. Ferrara in Support of Motion For Preliminary Approval of Class
17 Action Settlement

18 [Proposed] Order for Preliminary Approval of Class Action Settlement and Certification of
19 Settlement Class

20 X E-MAIL – by electronically transmitting the document(s) listed above to the
21 email address(es) of the addressee listed below, pursuant to the September 21, 2012 Joint
22 Stipulation and Order Mandating Electronic Service for the above referenced matters.

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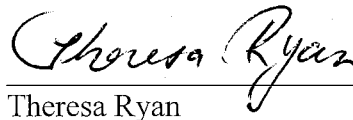
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Attorneys for Plaintiffs Kevin Dickens, et al.

14 I declare under penalty of perjury under the laws of the State of California that the above
15 is true and correct. Executed on March 17, 2015, at San Francisco, California.

17 
18 Theresa Ryan