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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 KEVIN DICKENS, et al.,
19 Plaintiffs,
20 v.

21 ROYAL AMBULANCE, INC., et al.,
22 Defendants.
23

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

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

) **CLASS ACTION**

) **NOTICE OF MOTION AND MOTION**
) **FOR AN AWARD OF ATTORNEYS' FEES**
) **AND LITIGATION COSTS, AND FOR**
) **SERVICE PAYMENTS; MEMORANDUM**
) **OF POINTS AND AUTHORITIES IN**
) **SUPPORT THEREOF**

) **Hearing Date: July 28, 2015**
) **Time: 8:45 a.m.**
) **Place: Dept. 21**
) **Reference No. R-1648298**

) **Consolidated Complaint Filed: Nov. 12, 2013**

1 **TO EACH PARTY AND THEIR ATTORNEY OF RECORD IN THIS ACTION:**

2 PLEASE TAKE NOTICE THAT on July 28, 2015 at 8:45 a.m., in Department 21 of this
3 Court located at 1225 Fallon Street, Oakland, California, Plaintiffs, ALEXANDER GUREVICH
4 and Plaintiffs KEVIN DICKENS, PATRICK OPPIDO, SPENCER STECZ, CHRIS HERN, and
5 PHILIP JONES (“Plaintiffs”) will move this Court for an order awarding attorneys’ fees to Class
6 Counsel in the amount of \$216,666.67, reimbursement of litigation costs in the amount of
7 \$21,097.70, and awarding service payments in the amount of \$10,000.00 each to ALEXANDER
8 GUREVICH and KEVIN DICKENS, and \$3,000.00 each to PATRICK OPPIDO, SPENCER
9 STECZ, CHRIS HERN, and PHILIP JONES for their time and effort devoted to representing the
10 interests of the Settlement Class.

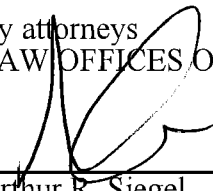
11 Good cause exists for granting this Motion in that the proposed settlement is fair,
12 reasonable, and adequate. This Motion is based upon this Notice of Motion and Motion, the
13 Memorandum of Points and Authorities in support thereof, the accompanying declarations of
14 Gerson H. Smoger, David M. Arbogast, Steven M. Bronson, Alexander Gurevich, Art Siegel, and
15 Robert S. Jaret, and attached exhibits, the files, records, and pleadings on file in this action, and all
16 other evidence or argument that may be presented by Named Plaintiffs at, or prior to, the hearing on
17 this Motion.

18 Respectfully submitted,

19 DATED: July 14, 2015

20 Plaintiffs, Kevin Dickens, Patrick Oppido, Spencer Stecz, Chris Hern,
21 Phillip Jones and Class

22 By attorneys
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DATED: July 14, 2015

Plaintiff Alexander Gurevich and the Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Alexander Gurevich, Kevin Dickens, Patrick Oppido, Spencer Stecz, Chris Hern, and Philip
4 Jones¹ (collectively, “Named Plaintiffs”) respectfully move for an award of attorneys’ fees in the
5 amount of \$216,666.67 to Class Counsel, litigation costs in the amount of \$21,097.70, and for an
6 award of service payments in the amount of \$10,000.00 each to ALEXANDER GUREVICH and
7 KEVIN DICKENS, and \$3,000.00 each to PATRICK OPPIDO, SPENCER STECZ, CHRIS
8 HERN, and PHILIP JONES pursuant to the terms of the Stipulation and Settlement of Class Action
9 Claims (the “Settlement Agreement”)² between Named Plaintiffs, the Settlement Class, and
10 Defendant Royal Ambulance, Inc. (“Defendant;” and collectively with Named Plaintiffs, as the
11 “Parties”). The settlement achieved herein provides substantial cash payments to Settlement Class
12 members³.

13 The request for attorneys’ fees and costs to be awarded as a percentage of the Total
14 Settlement Fund is appropriate. The proposed \$216,666.67 award represents 33 1/3% of the
15 \$650,000.00 Total Settlement Fund. The costs for which Class Counsel seek reimbursement are in
16 the amount of \$21,097.70. The request seeks compensation for Class counsel’s extensive efforts
17 during the years of litigation against Defendant that have resulted in a recovery for the Settlement
18 Class in the face of significant risks that could have resulted in, and, if the parties’ settlement is not
19 approved, could still result in far lower or even no recoveries for individual Settlement Class

20 _____
21 ¹ Before the Court are consolidated class actions: (1) *Alexander Gurevich v. Royal Ambulance, Inc.*,
22 Alameda County Superior Court Case No. RG12631895 (“the *Gurevich* Action”); and (2) *Kevin*
23 *Dickens, Patrick Oppido, Spencer Stecz, Chris Hern, and Philip Jones v. 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.

24 ² Capitalized terms herein shall have the same meaning as in the Settlement Agreement, which is
25 attached as Exhibit 1 to the Declaration of Robert S. Jaret Attaching Revised Joint Stipulation and
Settlement Agreement, filed on April 10, 2015, for consideration with the preliminary approval
motion (“Jaret Prelim. Decl.”).

26 ³ On April 10, 2015, the Court provisionally certified the following Settlement Class for settlement
purposes only:

27 All individuals who are currently or were formerly employed by Defendant as
28 Emergency Medical Technicians - Ambulance Drivers, from May 24, 2008, through April
10, 2015.

1 members. Moreover, the proposed fees and costs award is also supported when applying the
2 lodestar and multiplier methodology. As delineated below, Class Counsel's substantial work was
3 necessary to achieve this result and the resulting fractional multiplier of 0.3 of the lodestar is more
4 than fair and reasonable in light of the result Class Counsel have achieved on behalf of the
5 Settlement Class, the complex nature of this litigation, and the high degree of risk that Class
6 Counsel assumed in undertaking and litigating this action. The proposed Settlement Agreement
7 provides substantial and immediate cash relief for individual Settlement Class members, the vast
8 majority of whom, but for this litigation, would have received nothing for their legal claims in this
9 action. Thus, Named Plaintiffs' request for an award of \$216,666.67 in attorneys' fees and
10 reimbursement of litigation costs in the amount of \$21,097.70 is fair and reasonable, and should be
11 approved.

12 So too should the Court approve the proposed service payments of \$10,000.00 to
13 ALEXANDER GUREVICH and KEVIN DICKENS, and \$3,000.00 each to PATRICK OPPIDO,
14 SPENCER STECZ, CHRIS HERN, and PHILIP JONES for their efforts in representing the
15 Settlement Class and enabling the substantial recovery under the Settlement Agreement. The
16 proposed awards combined represent a little less than 5% of the Total Settlement Fund, and is
17 lower than awards to class representatives that this Court and others have approved in other
18 actions. In light of the substantial efforts that the Named Plaintiffs have devoted as representatives
19 of the Settlement Class, including answering all of Class Counsel's queries, attending mediations
20 (GUREVICH and DICKENS), reviewing documents, including the payroll records, time records,
21 and the Settlement Agreement, the proposed service payments of \$10,000.00 to ALEXANDER
22 GUREVICH and KEVIN DICKENS, and \$3,000.00 to PATRICK OPPIDO, SPENCER STECZ,
23 CHRIS HERN, and PHILIP JONES are imminently reasonable in the context of this Settlement
24 Agreement and therefore should be approved.

25 **II. CASE BACKGROUND**

26 **A. Procedural History**

27 Plaintiffs, on behalf of themselves and other employees who worked as Ambulance Drivers
28 for Defendant in California, filed the Actions against Defendant for alleged violations of California

1 wage and hour laws in the Superior Court for the State of California, County of Alameda.
2 Following the Court's Order To Consolidate Cases on October 11, 2013, a Consolidated Master
3 Complaint was filed in the Actions on November 12, 2013.

4 **B. The Master Complaint**

5 The Master Complaint alleges that Defendant violated various provisions of the California
6 Labor Code and the California Business and Professions Code by allegedly failing to pay overtime
7 compensation, failing to provide meal and rest breaks, failing to provide proper wage statements,
8 and failing to pay all wages due at the time of termination. *See* Master Complaint. In particular,
9 Plaintiffs and the other similarly situated Emergency Medical Technician/Ambulance Drivers were
10 employed by Defendant Royal Ambulance, Inc. during the Liability Period (from May 24, 2008 to
11 April 10, 2015).

12 The Master Complaint alleges that Defendant : (i) failed to pay overtime wages in violation
13 of Labor Code §§ 510, 1194 and Wage Order No. 9; (ii) failed to provide meal periods in violation
14 of Labor Code §§ 226.7, 512 and Wage Order No. 9; (iii) failed to provide rest periods in violation
15 of Labor Code § 226.7 and Wage Order No. 9; (iv) breached the contracts to pay wages; (v) failed
16 to pay all wages upon termination in violation of Labor Code § 203; (vi) failed to furnish and
17 maintain timely and accurate wage statements in violation of Labor Code § 226; (vii) failed to pay
18 minimum wages in violation of Labor Code §§ 510, 558, 1182, 1182.12, 1194, 1197; (viii) for
19 violations of California's Unfair Competition Law ("UCL"), Bus. & Prof. Code § 17200 *et seq.*; and
20 (ix) for injunctive relief forbidding the destruction of records pertaining to the putative Class.
21 Additionally, Plaintiff sought relief, including penalties, under the Labor Code Private Attorneys
22 General Act of 2004, Labor Code § 2698, *et seq.*

23 The legal issues in the Action concerned:

- 24 a. Whether Defendant is liable to Plaintiffs and the Class for damages for failing to pay
25 proper overtime wages;
- 26 b. Whether Defendant is liable to Plaintiffs and the Class for damages for failing to
27 provide meal periods;

28

- 1 c. Whether Defendant is liable to Plaintiffs and the Class for damages for failing to
2 provide rest periods;
- 3 d. Whether Defendant is liable to Plaintiffs and the Class for damages for its breach of
4 contract to pay wages;
- 5 e. Whether Defendant willfully failed to pay its employees' wages upon termination in
6 violation of California Labor Code section 202 entitling Plaintiffs and the Class
7 members to waiting time penalties;
- 8 f. Whether Defendant is liable to Plaintiffs and the Class members for failing to furnish
9 and maintain timely and accurate wage records;
- 10 g. Whether Defendant engaged in unlawful and unfair business practices in violation of
11 Business & Professions Code section 17200, and if so, whether Plaintiff is entitled to
12 equitable relief including but not limited to restitution and injunctive relief;
- 13 h. Whether Defendant should be enjoined from the destruction of records pertaining to
14 the putative Class;
- 15 i. Whether Defendant is or was Plaintiffs' and the Class members' employer during the
16 Liability Period;
- 17 j. Whether certification of the purposed class is proper. After being afforded an
18 opportunity to conduct sufficient discovery concerning Plaintiffs' individual and
19 class claims, Plaintiff will move for certification of all claims which meet the
20 requirements of certification (numerosity, commonality, typicality, adequacy and
21 superiority);
- 22 k. The appropriate amount of damages and restitution.

23 **Remedies:** Plaintiffs, on behalf of themselves and all others similarly situated, sought all
24 unpaid overtime wages due to Plaintiff and each Class member; for one hour of wages due Plaintiff
25 and each Class member for each work period of more than five (5) hours when they did not receive
26 an uninterrupted thirty (30) minute meal period; one hour of wages due Plaintiff and each Class
27 member for each work period of more than four (4) hours when they did not receive an
28 uninterrupted ten (10) minute rest period; continuation wages under Labor Code § 203; statutory

1 penalties under Labor Code § 226(e); damages as provided by law; an order awarding restitution of
2 the unpaid overtime, and premium wages due Plaintiff and the Class; for Declaratory Relief where
3 applicable; for a mandatory injunction requiring Defendant to comply with Labor Code § 226(a)
4 with respect to keeping and maintaining employee records; for a prohibitory injunction forbidding
5 Defendant from destroying employee records that it is required to keep and maintain pursuant to
6 Labor Code § 226; prejudgment interest at the maximum legal rate; reasonable attorneys' fees; costs
7 of suit; and such other relief as the Court may deem just and proper.

8 **C. Settlement**

9 Prior to reaching a settlement, the parties engaged in extensive informal discovery. Among
10 other things, counsel for Defendant produced relevant electronic documents (redacting the names of
11 current and former employees), including: (1) a class list (including date of hire and, if no longer
12 employed, date of termination); (2) payroll data (1-2-09 to 5-18-12); (3) time punch data (July 2008
13 to May 2012); and (4) information about the dates on which relevant employees executed 24-Hour
14 work agreements (along with copies of each agreement). Declaration of Arthur R. Siegel in Support
15 of Motion For Preliminary Approval of Class Action (“Siegel Prelim. Decl.”), ¶4. Additionally,
16 attorneys for both sides met on July 26, 2013, to review Defendant's financial records. During that
17 session, Royal disclosed cash flow summaries covering 2007 through 2012, tax returns from 2007
18 through 2012, banking records for 2011 and 2012, and a cash flow summary for the first half of
19 2013 under a protective order. Defendant made its accountant available at the meeting to answer
20 questions posed by Plaintiffs' counsel and their consultant, a Certified Public Accountant who also
21 attended the disclosure meeting. *Id.*, ¶6.

22 The parties in the Action participated in two full days of private mediation on April 29, 2013
23 and August 6, 2013 with mediator Mark S. Rudy. After mediation, Plaintiffs and Defendants
24 conducted substantial arms-length negotiations. Settlement efforts included a meeting with all
25 counsel, a financial expert retained by Plaintiffs to examine financial information furnished by
26 Defendant and Defendant’s accountant, which was held between the two mediation sessions. The
27 mediator engaged in extensive post-mediation communication with counsel for the parties, and
28 counsel for the parties themselves engaged in substantial direct negotiation. Negotiations

1 continued, as did some discovery until a Case Management Conference on July 17, 2014 at which
2 impediments to settlement were discussed with the Court. One main impediment consisted of the
3 language of the release, which Plaintiffs were concerned with it not being narrowly tailored to only
4 release the claims of the Class which were alleged in the Master Complaint and were being
5 compensated by Defendant. The Court agreed and, thereafter, Defendant made a revised proposal
6 for settlement which Plaintiffs believed to be fair, adequate, and reasonable for the Class on August
7 22, 2014. At that point, Plaintiffs accepted the offer of settlement. Siegel Prelim. Decl., ¶¶6, 7.

8 **D. The Terms of the Settlement Agreement**

9 The settlement, for which Plaintiffs are moving for final approval concurrently with this
10 motion, resolves all claims of the Plaintiffs and the Settlement Class against Defendants related to
11 alleged failure to pay wages, failure to provide meal breaks, failure to authorize and permit rest
12 breaks, failure to furnish timely and accurate wage statements, unlawful or unfair business practices
13 in violation of California Business & Professions Code Section 17200, et seq., including waiting
14 time penalties, interest, civil penalties provided by the Labor Code Private Attorneys General Act of
15 2004 (“PAGA”) and other penalties under federal and state law. The detailed terms are contained in
16 the Settlement Agreement attached as Exhibit 1 to the Jaret Prelim. Decl. filed on April 10, 2015.

17 Key provisions of the proposed settlement include the following:

- 18 • Defendant stipulates to certification of a Settlement Class for purposes of this
19 Settlement only;
- 20 • Defendant will pay a total of \$650,000, which is referred to as the Gross Settlement
21 Amount, in installments of \$450,000 (deposited 10 days after Preliminary Approval),
22 \$100,000 (deposited no later than one year from initial deposit) and \$100,000
23 (deposited no later than two years from initial deposit).
- 24 • Net Payments are to be divided as follows: 45% to wages (Paid to all Settlement
25 Class Members), 15% to Waiting Time (Labor Code §203) Penalties (paid to former
26 employee Settlement Class Members only), and 40% to Other Penalties and Interest)
27 (Paid to all Settlement Class Members).

28

- 1 • The Employer's share of payroll taxes and contributions shall be paid by Defendant
2 from its separate funds, and these will be paid separate and apart from the Gross
3 Settlement Amount.
- 4 • No claim or other submission is necessary in order to become a member of the
5 Settlement Class;
- 6 • Settlement Class Members will be mailed a check automatically if they do not opt
7 out of the Settlement;
- 8 • The settlement will release wage-and-hour claims for those Settlement Class
9 Members who are mailed a check;
- 10 • The release for those Class Members is precisely tailored to only those claims
11 alleged in the Consolidated Master Complaint;
- 12 • After deducting Class Counsel's attorneys' fees and costs, service payments to the
13 Plaintiffs, a portion of settlement administration costs, and a payment to California
14 Labor Workforce Development Agency, the Net Settlement Amount will be
15 distributed and paid to Settlement Class Members who do not opt out of the
16 Settlement, with each Settlement Class Member's share to be determined based on
17 the gross earnings of each Settlement Class Member, as a percentage of the
18 aggregate gross earnings of all Settlement Class Members;
- 19 • Any settlement checks that are mailed to the Settlement Class Members and remain
20 uncashed after 180 days of the date of issuance will be cancelled, and the moneys
21 will be directed to one or more cy pres recipients benefitting California Employees;
- 22 • The notice portion of the Settlement will be administered by Angeion Group, a third-
23 party Administrator;
- 24 • Defendant will not oppose service payments in the total amount of \$32,000 to the
25 Named Plaintiffs, to be paid out of the Gross Settlement Amount;
- 26 • Defendant will not oppose payment to Class Counsel for fees up to the 33.3% of the
27 Gross Settlement Amount and costs of up to \$25,000, to be paid out of the Gross
28 Settlement Amount.

1 **E. Preliminary Approval, Settlement Notice, and Settlement Administration**

2 The Named Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement,
3 and on April 10, 2015, the Court entered its Order (“Preliminary Approval Order”), in which the
4 Court, among other things, provisionally certified the Settlement Class, as defined as:

5 All individuals who are currently or were formerly employed by Defendant as Emergency
6 Medical Technicians - Ambulance Drivers, from May 24, 2008, through April 10, 2015.

7 The Court also preliminarily approved the Settlement Agreement; appointed Named
8 Plaintiffs as Class Representatives; appointed Class Counsel as counsel for the Settlement Class;
9 appointed Angeion Group as the Settlement Administrator; approved the plan for disseminating the
10 Settlement Notice to Settlement Class members, approved the form of the Settlement Notice, and
11 ordered Angeion Group to mail the Settlement Notice; and scheduled the Final Approval Hearing
12 for July 10, 2015, which was continued until July 28, 2015 on stipulation of the parties.

13 On April 20, 2015, Defendant provided Angeion Group with a list of 622 Settlement Class
14 members and their addresses. Angeion Group performed a search for updated addresses by
15 accessing the National Change of Address (“NCOA”) database, and identified updated addresses for
16 Settlement Class members. Declaration of Brian Devery, filed concurrently herewith (“Devery
17 Decl.”), ¶ 5. On May 8, 2015, Angeion Group mailed Settlement Notices to all 622 Settlement
18 Class members. *Id.* at ¶ 6. Angeion Group received no returned notices with forwarding addresses
19 from the postal service. Angeion Group also received 54 returned notices without forwarding
20 addresses, for which Angeion Group obtained updated addresses using a skip trace, and identified
21 24 updated addresses. *Id.* at ¶ 8. In total Angeion Group re-mailed notices to 24 addresses. *Id.* at ¶
22 8. Angeion Group called the 30 Class members for whom no new address was located. Of those
23 thirty, 21 could not be contacted. *Id.* at ¶ 10. Angeion continues to work to contact these 21. *Id.*

24 The Settlement also had its own website,
25 www.jaretlaw.com/royalambulanceclassaction.html, accessible to the dedicated link at
26 www.sanfranciscolitigators.com/royalambulanceclassaction.html, thus informing Settlement Class
27 members about relevant deadlines and making certain documents, including the Settlement Notice,
28 Settlement Agreement and Preliminary Approval Order, available to Settlement Class members.

1 Declaration of Robert S. Jaret in Support of Motion for Final Approval of Class Action Settlement,
2 filed concurrently herewith, at ¶ 3 (“Jaret Decl.”).

3 The response from Settlement Class members has been completely positive. Settlement
4 Notices were mailed to all Settlement Class members, and re-mailed to forwarding addresses and
5 updated addresses as identified. As of the date of this Motion, Angeion Group has not received
6 a single objection, and has received no exclusion requests. Devery Decl., ¶ 11. This
7 response demonstrates that the Settlement Class overwhelmingly supports the Parties’
8 request for final approval of the settlement as concurrently requested, as well as the payment
9 of Attorneys’ Fees, Litigation Costs, and Incentive Awards as outlined herein.

10 **III. ARGUMENT**

11 **A. The Court Should Approve the Fees and Costs Application as Fair and** 12 **Reasonable.**

13 **1. The Percentage-of-the-Benefit Method Is Applicable Because the** 14 **Settlement Creates a \$650,000.00 Common Fund**

15 The common fund doctrine “has been recognized and applied consistently in California
16 when an action brought by one party creates a fund in which other persons are entitled to share.”
17 *City & Cnty. of San Francisco v. Sweet*, 12 Cal. 4th 105, 110-11 (1995). The doctrine provides that
18 “when a number of persons are entitled in common to a specific fund, and an action brought by a
19 plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such
20 plaintiff or plaintiffs may be awarded attorneys fees out of the fund.” *Serrano v. Priest*, 20 Cal. 3d
21 25, 34 (1977). Counsel may be awarded a percentage of the common fund “where the amount [is] a
22 ‘certain or easily calculable sum of money.’” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1809
23 (1996). *See also Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 27 (2000) (discussing
24 the percentage of the benefit approach).

25 Here, the Settlement provides for Defendant to pay \$650,000.00 from which all payments,
26 including an award of attorneys’ fees and costs, service payments to Named Plaintiffs, and
27 distribution to Settlement Class members, are to be made. Since the Settlement Agreement here has
28

1 a certain and readily determinable value, the percentage-of-the-benefit method is the most
2 appropriate basis for awarding attorneys' fees.

3 **2. The Fees and Costs Award Sought Herein is Reasonable as a Percentage**
4 **of the Total Settlement Fund**

5 The proposed attorneys' fees and costs award of \$216,666.67 is exactly 33 1/3% of the
6 \$650,000.00 Total Settlement Fund and is reasonable given the circumstances of the case.
7 Plaintiffs' expenses for which they seek reimbursement, which total \$21,097.70 represents
8 approximately 3% of the Total Settlement Fund, and thus falls well within the range of
9 reasonableness. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) ("Empirical
10 studies show that, regardless whether the percentage method or the lodestar method is used, fee
11 awards in class actions average around one-third of the recovery" (quoting *Shaw v. Toshiba Am.*
12 *Info. Sys., Inc.*, 91 F. Supp. 2d 942, 972 (E.D. Tex. 2000));

13 "When assessing whether the percentage requested is reasonable, courts look to factors such
14 as: (a) the results achieved; (b) the risk of litigation; (c) the skill required; (d) the quality of work;
15 (e) the contingent nature of the fee and the financial burden; and (f) the awards made in similar
16 cases." *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 492 (E.D. Cal. 2010) (citing
17 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) ("*Vizcaino II*"), and *Six (6)*
18 *Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301 (9th Cir. 1990)). All of these factors
19 support the proposed \$216,666.67 in fees and \$21,097.70 in costs award here.

20 **(a) Results Achieved**

21 The results achieved in this extremely high-risk litigation are excellent. The Settlement
22 Agreement creates a \$650,000.00 settlement fund, from which all Settlement Class members who
23 can be located and who do not opt out will receive a cash payment. Under any measure, this is a
24 substantial recovery for the Settlement Class as a whole, and individually for the current and former
25 employees of Defendant in the Settlement Class. In assessing the results achieved through a class
26 action settlement for purposes of awarding attorneys' fees and costs, the Court must "recognize that
27 'settlement represents a compromise in which the highest hopes for recovery are yielded in
28 exchange for certainty and resolution and guard against demanding too large a settlement'"

1 *Nichols v. SmithKline Beecham Corp.*, No. Civ.A.00-6222, 2005 WL 950616, at *15 (E.D. Pa. Apr.
2 22, 2005) (quoting *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Products Liab. Litig.*, 55 F.3d
3 768, 806 (3d Cir. 1995)).

4 Moreover, a settlement is not judged against what might have been recovered had the
5 plaintiff prevailed at trial; nor does the settlement need to provide anywhere near 100% of the
6 damages sought to be fair and reasonable. *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242
7 (9th Cir. 1998); *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 246 and 250 (2001);
8 *Rebney v. Wells Fargo Bank*, 220 Cal. App. 3d 1117, 1139 (1990). “Compromise is inherent and
9 necessary in the settlement process [E]ven if ‘the relief afforded by the proposed settlement is
10 substantially narrower than it would be if the suits were to be successfully litigated,’ this is no bar to
11 a class settlement because ‘the public interest may indeed be served by a voluntary settlement in
12 which each side gives ground in the interest of avoiding litigation.’” *Wershba*, 91 Cal. App. 4th at
13 250 (quoting *Air Lines Stewards & Stewardesses Ass’n Local 550 v. Am. Airlines, Inc.*, 455 F.2d
14 101, 109 (7th Cir. 1972)). Ultimately, Courts have consistently recognized that the result achieved
15 is a major factor to be considered in making a fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 436
16 (1983) (the “most critical factor is the degree of success obtained”). Particularly here, where there
17 existed a real possibility, as represented by Defendant, that it, a relatively small enterprise, could go
18 out of business as a result of the litigation prior to the class receiving any compensation, and
19 resulting in the loss of the jobs of many class members.

20 Here, the relief afforded by the Settlement Agreement is substantial in light of the obstacles
21 the litigation presented and thus strongly supports the proposed \$216,666.67 fees award and
22 \$21,097.70 in costs reimbursement. In the face of these risks, the Settlement Agreement’s recovery
23 of \$650,000 represents a substantial result. And, importantly, this amount was agreed upon only
24 “after protracted arms-length and adversarial negotiation, during which time an experienced
25 impartial mediator helped the Parties arrive at a compromise amount that both Parties find
26 satisfactory.” *Garner v. State Farm Mut. Auto. Ins. Co.*, CV 08 1365 CW EMC, 2010 WL 1687832,
27 at *11 (N.D. Cal. Apr. 22, 2010).

28

1 Under similar circumstances, the courts in the Ninth Circuit have approved awards in excess
2 of the 25% benchmark. See *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000)
3 (affirming award of attorneys' fees equal to 33 1/3% of the fund); *Fernandez v. Victoria Secret*
4 *Stores, LLC*, CV 06-04149 MMM SHX, 2008 WL 8150856, at *16 (C.D. Cal. July 21, 2008)
5 (awarding 34% of the common fund).

6 **(b) Quality of Work Performed**

7 Throughout the course of the litigation, the quality of the legal work performed by Class
8 Counsel has been of the highest caliber.

9 **(i) Investigation and Development of Facts**

10 Throughout the course of this action, the Parties conducted extensive discovery and
11 *Gurevich* counsel propounded written discovery, as explained below and in the Siegel Prelim. Decl.

12 **(ii) Settlement Negotiations**

13 Prior to reaching a settlement, the parties engaged in extensive informal discovery. Among
14 other things, counsel for Defendant produced relevant electronic documents (redacting the names of
15 current and former employees), including: (1) a class list (including date of hire and, if no longer
16 employed, date of termination); (2) payroll data (1-2-09 to 5-18-12); (3) time punch data (July 2008
17 to May 2012); and (4) information about the dates on which relevant employees executed 24-Hour
18 work agreements (along with copies of each agreement). Siegel Prelim. Decl., ¶4. Additionally,
19 attorneys for both sides met on July 26, 2013, to review Defendant's financial records. During that
20 session, Royal disclosed cash flow summaries covering 2007 through 2012, tax returns from 2007
21 through 2012, banking records for 2011 and 2012, and a cash flow summary for the first half of
22 2013 under an "Attorneys Eyes Only" protective order. Defendant made its accountant available at
23 the meeting to answer questions posed by Plaintiffs' counsel and their consultant, a Certified Public
24 Accountant who also attended the disclosure meeting. *Id.*, ¶6.

25 The parties in the Action participated in two full days of private mediation on April 29, 2013
26 and August 6, 2013 with mediator Mark S. Rudy. After mediation, Plaintiffs and Defendants
27 conducted substantial arms-length negotiations. Settlement efforts included a meeting with all
28 counsel, a financial expert retained by Plaintiffs to examine financial information furnished by

1 Defendant and Defendant’s accountant, which was held between the two mediation sessions. The
2 mediator engaged in extensive post-mediation communication with counsel for the parties, and
3 counsel for the parties themselves engaged in substantial direct negotiation. Negotiations
4 continued, as did some discovery until a Case Management Conference on July 17, 2014 at which
5 impediments to settlement were discussed with the Court. One main impediment consisted of the
6 language of the release, which Plaintiffs were concerned with it not being narrowly tailored to only
7 release the claims of the Class which were alleged in the Master Complaint and were being
8 compensated by Defendant. The Court agreed and, thereafter, Defendant made a revised proposal
9 for settlement which Plaintiffs believed to be fair, adequate, and reasonable for the Class on August
10 22, 2014. At that point, Plaintiffs accepted the offer of settlement. *Id.*, ¶¶ 6, 7.

11 **(c) Skill Required**

12 **(i) Complexity and Difficulty of the Issues**

13 Class actions are complex cases, and this one required Class Counsel to confront the many
14 difficult legal and factual issues set forth herein and in the preliminary approval papers. Courts
15 have recognized that the novelty and difficulty of issues in a case are significant factors to be
16 considered in making a fee award. *See, e.g., Vizcaino v. Microsoft Corp.*, 142 F. Supp. 2d 1299,
17 1306 (W.D. Wash. 2001) (“*Vizcaino I*”). Here, Plaintiffs and Class Counsel have achieved
18 significant successes in litigating these issues to date, which have resulted in the substantial
19 monetary relief provided to the Settlement Class under the Settlement Agreement. Class Counsel’s
20 successes on these difficult and complex litigation issues weigh strongly in favor of the proposed
21 fees and costs award.

22 **(ii) High Caliber of Opposing Counsel**

23 The caliber of opposing counsel is another important factor in assessing the quality of Class
24 Counsel’s representation of the Settlement Class. *See, e.g., Vizcaino I*, 142 F. Supp. 2d at 1303; *In*
25 *re Equity Funding Corp. of Am. Sec. Litig.*, 438 F. Supp. 1303, 1336-37 (C.D. Cal. 1977). Here,
26 Class Counsel was opposed by attorneys from a well-regarded law firm who were representing a
27 sophisticated client. Despite facing such heavily funded adversaries, Class Counsel achieved an
28 outstanding result for the Settlement Class by virtue of the Settlement Agreement’s \$650,000

1 settlement fund and the cash benefits provided therein for Settlement Class members. Class
2 Counsel's achievement of this result against highly skilled opposing counsel backed by massive
3 resources likewise supports the 33 1/3% fees and costs award sought herein.

4 **(d) Risks of Litigation**

5 Risk is likewise an important factor in assessing the fairness and reasonableness of a class
6 action settlement fee and cost award. *See, e.g., Vizcaino I*, 142 F. Supp. 2d at 1303-04; *see also In*
7 *re Pac. Enterprises Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (33% of common fund as
8 attorneys' fees was fair and reasonable because of the complexity of issues and risks of litigation).
9 Class Counsel here faced many risks, including, but not limited to, the following substantive
10 litigation risks.

11 **(i) Risk of Not Establishing Claim or Liability**

12 Defendant presented evidence that there had been an Alternate Workweek Election in
13 December, 2009 for the work unit consisting of "all non-exempt employees classified as EMT's and
14 employed in the Company's San Leandro and San Jose, California offices." Seigel Prelim. Decl, ¶
15 16. In that election, Defendant claimed the unit adopted an alternate workweek. The documentation
16 presented showed the workweek adopted called for a four day workweek of 10 hour days with no
17 overtime for work performed within that schedule. Defendant further produced numerous
18 individual "Alternate Work Week Schedule, Overtime and 24-Hour Shift Agreements". Seigel
19 Prelim. Decl, ¶¶ 16-18. These agreements (which stated that they were intended to comply with
20 I.W.C. Order No. 9-2001, §3(K) and other legal authority), if accepted by the Court as controlling,
21 would have obviated claims for meal period premium pay, and daily and weekly overtime.
22 Defendant claimed, and the documentation tended to show, that a number of the Class
23 Representatives had signed these agreements. *Id.*

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

1 Counsel also questioned the Alternate Work Week Agreements, in part because few of the
2 signatories recalled signing them. However, in evaluating the risk of litigation on these points,
3 counsel had to factor in the possibility that the election and the Agreements would be credited by
4 the trier of fact, resulting in the elimination or substantial reduction of major parts of the Class's
5 claimed losses.

6 Finally, Class Counsel took into account the representations of Defendant regarding the
7 likelihood that a larger settlement would put it out of business in light of its assets and the reduced
8 expectations for profit in the type of ambulance service provided by Defendant in the Affordable
9 Care Act era. The possibility of obtaining a judgment much larger than the settlement had to be
10 evaluated in light of possible problems with collection, including bankruptcy. The possibility that
11 Defendant, a relatively small enterprise, could go out of business as a result of the litigation,
12 resulting in the loss of the jobs of many class members, was represented by Defendant as a real
13 possibility.

14 For each of these reasons, Class Counsel faced significant risk in litigating this matter,
15 including the risk of not establishing the claims or liability.

16 **(ii) Risk as to Measure and Amount of Restitution and Damages**

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

21 Analyzing the claims in this matter, Class Counsel concluded that the value of this
22 Settlement is fair, adequate and reasonable based the calculations and risk adjustments presented in
23 the Siegel Prelim. Decl., ¶¶ 14-33. While Class Counsel felt they had a strong case, there were also
24 facts which, as discussed above, would have significantly reduced these maximum amounts.

25 Defendant Royal represented that it did not, at the time the settlement was negotiated and
26 does not now have sufficient cash reserves or assets to pay more than \$650,000 and stay in business.
27 Royal's CEO and 90% shareholder calculated that the anticipated costs to Royal to litigate this
28 matter through trial would drive Royal out of business and Royal will file for bankruptcy if this

1 settlement is not approved. Further, this would result in the termination of 154 employees. (Prelim.
2 Decl. of Steve Grau, ¶¶2, 6) The results obtained despite these formidable threats are extremely
3 favorable to the Settlement Class and support the fees and costs sought here.

4 **3. A Lodestar Cross-Check Easily Supports the Reasonableness of the**
5 **Requested Reward.**

6 Even in common fund cases like this one where a percentage-based award is readily
7 determinable with straight-forward calculations, a lodestar cross-check may help a court in
8 determining whether a proposed percentage award is reasonable in light of all circumstances of a
9 case. *See Lelao*, 82 Cal. App. 4th at 47-50; *Vizcaino II*, 290 F.3d at 1050. Attorneys' fees awards
10 commonly exceed the counsel's lodestar. *See, e.g., In re Sutter Health Uninsured Pricing Cases*,
11 171 Cal. App. 4th 495, 512 (2009) (affirming a multiplier of 2.52); *Chavez, supra*, 162 Cal. App.
12 4th at 66 (affirming an award of fees that was 2.5 times the lodestar); *Wershba*, 91 Cal. App. 4th at
13 255 (noting that multipliers can range from 2 to 4 or even higher).

14 Here, a lodestar cross-check of the requested fee award yields a fractional multiplier of 0.3
15 (\$216,666.67 / \$718,672.50).

<u>Class Counsel:</u>	<u>Lodestar Attorneys' Fees:</u>	<u>Litigation Costs:</u>
Gerson H. Smoger, Esq.	\$98,572.50	\$5,605.06
Steven M. Bronson, Esq.	\$54,660.00	\$997.80
David M. Arbogast, Esq.	\$348,902.50	\$2,679.90
Art Siegel, Esq.	\$110,500.00	\$6,753.68
Robert Jaret, Esq.	\$106,037.50	\$5,061.26
TOTAL:	\$718,672.50	\$21,097.70

23 *See* Declarations of Gerson H. Smoger, David M. Arbogast, Steven M. Bronson, Art Siegel, and
24 Robert S. Jaret, filed concurrently herewith.

25 Additionally, Class Counsel are continuing, and will continue, to dedicate significant time to
26 the case throughout the final approval and administration process. Thus, the fractional multiplier
27 here easily supports the requested fee award.

1 Here, where the fee award represents 33 1/3% of the common fund, and the lodestar
2 multiplier is 0.3 based on hours of work performed to date, an award of \$216,666.67 is more than
3 reasonable under either of these measures for determining fee and cost awards in class action
4 litigation. The fact that the final lodestar multiplier will be even lower after Class Counsel performs
5 all of the necessary additional work to secure final approval and implementation of the Settlement
6 Agreement only further underscores the reasonableness of the proposed award. *See generally*
7 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998) (affirming fee award where class
8 counsel “must remain available to enforce the contractual elements of the settlement agreement and
9 represent any class members who encounter difficulties”).

10 For all of the reasons set forth, whether measured as a percentage of the common fund under
11 the Settlement Agreement or on a lodestar basis, the proposed attorneys’ fee of \$266,666.67 and
12 cost award of \$21,097.70 to Class Counsel falls well within the bounds of fairness and
13 reasonableness recognized by California Courts, the Ninth Circuit, and others across the country,
14 and therefore should be approved.

15 **4. Class Counsel Should Be Awarded Costs.**

16 Class Counsel’s application for an expense award of \$21,097.70 from the Total Settlement
17 Fund is sought solely as reimbursement of in expenses incurred in connection with the prosecution
18 of this litigation.⁴ The expenses incurred are discussed in the Declarations of David M. Arbogast,
19 Gerson H. Smoger, Steven M. Bronson, Robert S. Jaret, and Art Siegel, and are distributed as
20 shown in the table above. Defendant has agreed to reimburse these expenses as long as the total
21 amount of fees and costs did not exceed \$25,000 of the Total Settlement Fund, which they do not
22 exceed.

23 Class Counsel is typically entitled to reimbursement of all reasonable out-of-pocket
24 expenses and costs in prosecution of the claims and in obtaining a settlement. In *Serrano v. Priest*,
25 for example, the California Supreme Court advised that reimbursement of costs in a common fund

26 _____
27 ⁴ This amount does not include expenses that have yet to be incurred, including expenses for
28 attending the Final Approval Hearing, which are estimated to exceed \$1,000.

1 is “grounded in ‘the historic power of equity to permit the trustee of a fund or property, or a party
2 preserving or recovering a fund for the benefit of others in addition to himself, to recover his costs,
3 including his attorneys’ fees, from the fund or property’.” 20 Cal. 3d at 35 (citing *Alyeska Pipeline*
4 *Co. v. Wilderness Soc’y*, 421 U.S. 240, 257 (1995)).

5 **B. The Court Should Approve the Proposed Service Payments to Named Plaintiffs.**

6 Courts often approve awards to class representatives for their service to the class as part of
7 their approval of settlements in class actions. *See, e.g., In re Cellphone Fee Termination Cases*, 186
8 Cal. App. 4th 1380 (2010). “[C]riteria courts may consider in determining whether to make an
9 incentive award include: 1) the risk to the class representative in commencing suit, both financial
10 and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3)
11 the amount of time and effort spent by the class representative; 4) the duration of the litigation and;
12 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the
13 litigation. [Citation.]” *Id.* at 1394-95 (quoting *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp.
14 294, 299 (N.D. Cal. 1995)).

15 California courts and courts Ninth Circuit have approved as fair and reasonable incentive
16 awards in amounts similar to the total amounts requested by the Named Plaintiffs. *See, e.g., In re*
17 *Cellphone Fee Termination Cases*, 186 Cal. App. 4th at 1393 (affirming awards of \$10,000 to each
18 of four class representatives); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, M 07-1827 SI, 2013 WL
19 1365900, at *17 (N.D. Cal. Apr. 3, 2013) (approving incentive awards of \$15,000 for each of the 40
20 court-appointed class representatives); *In re Mego*, 213 F.3d at 457 (affirming awards of \$5,000 to
21 each of two named plaintiffs from \$1,725,000 settlement fund); *In re Wachovia Corp. “Pick-a-*
22 *Payment” Mortgage Mktg. and Sales Practices Litig.*, 5:09-md-02015-JF, 2011 WL 1877630, at
23 *7 (N.D. Cal. May 17, 2011) (approving awards ranging from \$2,500 to \$14,250 and totaling
24 \$125,000 to named plaintiffs). *See also* Theodore Eisenberg & Geoffrey P. Miller, *Incentive Awards*
25 *to Class Action Plaintiffs: An Empirical Study*, 53 UCLA L. Rev. 1303, 1333 (2006) (an empirical
26 study of incentive awards to class action plaintiffs has determined that the average aggregate
27 incentive award within a consumer class action case is \$29,055.20, and that the average individual
28 award is \$6,358.80.)

1 Named Plaintiffs and Class Counsel are requesting that the Court approve compensation
2 from the \$650,000.00 Total Settlement Fund based on their contributions to the litigation. The
3 requested awards, when combined, represent a less than 5% of the Total Settlement Fund, and fall
4 well within the range of awards by the courts in California and in the Ninth Circuit, as discussed
5 above.

6 All Plaintiffs here were, and still are, concerned about the risk of such adverse treatment but
7 nevertheless initiated this litigation on behalf of their former co-workers who can now collect
8 settlements. Therefore, Plaintiffs believe the amounts requested as incentive awards are reasonable,
9 and will ask the Court to approve these awards. *Clark*, 175 Cal. App.4th at 804-807.

10 The award also compensates Named Plaintiffs for their assistance in prosecuting this action
11 on behalf of the Settlement Class and reaching the settlement with Defendant, which substantially
12 benefits the Settlement Class. During this litigation, Named Plaintiffs have expended numerous
13 hours in communicating with Class Counsel, reviewing the complaint and other documents filed in
14 the action, copying and sending documents that were requested by Class Counsel, and responding to
15 written discovery propounded by Defendant. Declaration of Declaration of Alexander Gurevich
16 (“Gurevich Decl.”), filed concurrently herewith, and the Supplemental Declaration of Robert S.
17 Jaret (“Jaret Supp. Decl.”), filed concurrently herewith. Named Plaintiffs also have been in contact
18 with Class Counsel regarding the settlement, and have reviewed the Settlement Agreement to
19 ensure that it is beneficial to the Settlement Class. Gurevich Decl., ¶ 3; Jaret Supp. Decl. Mr.
20 Gurevich spent at least 80 hours of his time working on the prosecution of this matter. Gurevich
21 Decl. ¶ 3-4. Furthermore, Mr. Gurevich, and Mr. Dickens, attended both of the mediation sessions
22 on behalf of the putative class. *Id.* ¶ 3. In light of the valuable services Named Plaintiffs have
23 performed for the Settlement Class, the payments of \$10,000.00 each to ALEXANDER
24 GUREVICH and KEVIN DICKENS, and \$3,000.00 each to PATRICK OPPIDO, SPENCER
25 STECZ, CHRIS HERN, and PHILIP JONES are fair and reasonable compensation.

26 Finally, no class member has objected to the requested service fees to the class
27 representatives, as described in the Notice to the Class, further supporting their award and their
28 reasonableness given the benefits that the Class will receive.

1 **IV. CONCLUSION**

2 For all of the reasons set forth herein, Named Plaintiffs and Class Counsel respectfully
3 request that the Court approve the proposed award of attorneys' fees of \$216,666.67 and costs of
4 \$21,097.70 to Class Counsel and the proposed service payments of \$10,000.00 each to
5 ALEXANDER GUREVICH and KEVIN DICKENS, and \$3,000.00 each to PATRICK OPPIDO,
6 SPENCER STECZ, CHRIS HERN, and PHILIP JONES.

7 DATED: July 14, 2015 Plaintiffs, Kevin Dickens, Patrick Oppido, Spencer Stecz, Chris Hern,
8 Phillip Jones and Class

9 By attorneys
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