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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

ALEXANDRA AVERY, **JULIE ROSS**, **DENISE NOLFO**, **MAILEEN AGUILAR**, **MINOOSH ZARRINNEGAR**, **GWENDOLYN B. CADE**, **RUTH CALDERON** and **JAIMIE ANN GEBLER**, on behalf of themselves and on behalf of all others similarly situated,

Plaintiffs,

v.

INTEGRATED HEALTHCARE HOLDINGS, INC., a Nevada Corporation; **WMC-SA, INC.**, a California Corporation d/b/a Western Medical Center – Santa Ana; **CHAPMAN MEDICAL CENTER, INC.**, a California Corporation d/b/a Chapman Medical Center; **COASTAL COMMUNITIES HOSPITAL, INC.**, a California corporation d/b/a Coastal Communities Hospital; **WMC-A, INC.**, a California corporation d/b/a Western Medical Center – Anaheim; and **DOES 1 through 50**,

Defendants.

Case No. 30-2009-00274060 (Lead Case)
-and-
Case No. 30-2010-0338805

MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Date:	July 30, 2014
Time:	8:30 a.m.
Department:	CX 102
Judge:	Hon. Robert J. Moss

Complaint Filed: June 5, 2009

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NOTICE OF MOTION AND MOTION

Please take notice that on July 30, 2014 Plaintiffs Alexandra Avery, Julie Ross, Denise Nolfo, Maileen Aguilar, Minoosh Zarrinnegar, Gwendolyn B. Cade, Ruth Calderon and Jaimie Ann Gebler (collectively "Named Plaintiffs," "Plaintiffs" or "Class Representatives") will and hereby do move for an Order Granting Final Approval of the Class Action Settlement in this Litigation.

The motion is based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities, the Declarations submitted herewith and the Court's entire record in this matter.

The motion is made on the grounds that the Settlement is fair, adequate and reasonable, provides substantial, certain and immediate relief to the class, is unopposed by any class member and enjoys the overwhelming support of the Class, the Named Plaintiffs and Class Counsel.

Respectfully submitted,

Dated: July 18, 2014

COTCHETT, PITRE & McCARTHY, LLP

By: */s/ Justin T. Berger*

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is the rarest of class action settlements. It is a non-reversionary class settlement for significant sums of money, with no objectors, and no opt-outs. Out of 2,599 class members, there have been no objections to the settlement, no opt-outs from the recovery and an incredible claim rate of over 77%. Over 90% of the fund has been claimed by class members, and because it is non-reversionary, each claimant will receive slightly more than they expected under the terms of the agreement and identified on the notice to the class. Moreover, the case resulted in a published appellate decision favorable to employees and consumers throughout California, and resulted in business practice changes by the Defendant.

By all measures, the Settlement – negotiated over a full day's meditation session with Mr. Steven J. Rottman, Esq. in addition to months of subsequent and arms' length negotiations between Class Counsel and counsel for Defendant – is more than fair, adequate and reasonable, and merits final approval of this Court.

Accordingly, pursuant to California Rules of Court, Rule 3.769(g) Plaintiffs Alexandra Avery, Julie Ross, Denise Nolfo, Maileen Aguilar, Minoosh Zarrinneagar, Gwendolyn B. Cade, Ruth Calderon, and Jamie Ann Gebler (collectively, "Named Plaintiffs") hereby request the Court grant final approval of the Settlement Agreement ("Settlement") in this matter. The proposed settlement is fair, reasonable, and adequate, results from objective, arms-length negotiation and meets the applicable criteria for this Court's approval.

II. FACTUAL AND PROCEDURAL BACKGROUND

On June 5, 2009, Plaintiff Alexandra Avery filed her initial complaint against Defendant IHHI and Western Medical Center –Santa Ana. On January 25, 2010, Julie Ross, Denise Nolfo, and Maileen Aguilar filed a complaint against Defendant IHHI. On September 21, 2010, the Court ordered the two cases to be consolidated. On September 23, 2010, Plaintiffs Avery, Ross, Nolfo, and Aguilar filed their Consolidated Complaint. After these cases were consolidated, Plaintiffs Avery, Ross, Nolfo, Aguilar, Minoosh Zarrinneagar, Gwendolyn B. Cade, Ruth Calderon, and Jamie Ann Gebler (collectively, "Named Plaintiffs") filed their First Amended

Consolidated Complaint ("the Complaint") pursuant to the stipulation of the Parties, as approved by the Court on June 17, 2011.

This case concerns overtime claims based on Defendant's "California Differential" compensation scheme, which applied to nurses, respiratory therapists and other 12-hour shift professionals employed by Defendant Integrated Healthcare Holdings, Inc. ("IHHI" or "Defendant") at its four Orange County Hospitals: (1) WMC-SA, INC., dba Western Medical Center — Santa Ana; (2) Chapman Medical Center, Inc., dba Chapman Medical Center; (3) Coastal Communities Hospital, Inc., dba Coastal Communities Hospital; and (4) WMC-A, INC., dba Western Medical Center — Anaheim. Plaintiffs alleged that instead of compensating employees with overtime premium pay based on their regular pay rate, Defendant's pay plan applied a pay rate identified as a "California Differential," sometimes referred to as the Cal. Diff. Pay Practice which artificially reduced the amount employees were paid by effectively eliminating overtime pay. Defendant's pay plan created and perpetuated an artificially lower rate of pay for the first eight hours of any workday and then compensated Class Members at an overtime rate based on the artificial lower rate and, if necessary, applied the California Differential to equalize the amount Plaintiffs received. Defendant's pay plan applied to all class members in the same way. Plaintiffs, therefore, alleged they were denied overtime pay and asserted related claims based on various FLSA and California Labor Code violations.

Defendant denies the claims alleged by Plaintiffs and denies that it violated the laws regarding overtime compensation. Defendant contends it never engaged in any unlawful, unfair, or fraudulent business practices and that it never engaged in any other wrongful conduct. The settlement resolve disputed and hotly contested claims.

On July 18, 2011, Defendant filed Notices of Motion and Motions to Compel Individual Arbitration with respect to each Named Plaintiff. After discovery related to the purported arbitration clauses relied upon by Defendants and full briefing on the matter, on October 21, 2011, this Court denied each the motions, finding both that the Defendants had not demonstrated the existence of an agreement to arbitrate and that any such agreements Defendants had identified were both substantively and procedurally unconscionable and therefore unenforceable.

On December 9, 2011, Defendant filed its Notice of Appeal of the trial court's order denying arbitration. After full briefing, including supplemental briefs at the request of the Appellate Court, and oral argument, the Court of Appeal affirmed the trial court's decision denying Defendant's motions on June 27, 2013. Defendant's Petition for Rehearing and subsequent Request for De-Publication of Appellate Opinion were both denied.

The parties then engaged in a full day mediation before Steven J. Rottman, Esq., an experienced mediator, especially related wage and hour claims. While the mediation did not directly result in a settlement, the parties continued to negotiate, both with Mr. Rottman and directly between counsel, and eventually reached a tentative agreement. Counsel for the parties then continued their negotiations and eventually reduced their agreement to writing and submitted it to this Court for preliminary approval so that class members could receive notice of the Settlement and decide whether to participate, object or opt out. On April 4, 2014, the Court granted preliminary approval of the Settlement, and ordered notice to the class be given.

The details of the litigation and the work conducted by Class Counsel are provided in the accompanying declarations. *See e.g.*, Declaration of Frank J. Coughlin ("Coughlin Decl.") ¶¶ 7-29.

III. SUMMARY OF MEDIATION AND THE SETTLEMENT

On October 10, 2013, after submitting and exchanging mediation briefs, the Parties engaged in a full-day mediation before an experienced and well-regarded mediator, Mr. Steven J. Rottman, Esq., whom many consider as one of the preeminent mediators in the wage and hour area. *See* Coughlin Decl. ¶ 25. The Parties were unable to reach a settlement during the mediation. *See id.* However, after the mediation, both Parties, with the ongoing assistance of Mr. Rottman, participated in several months of significant settlement discussions to resolve the issues involved and to formulate an action plan. *Id.* at ¶¶ 26-29. The Parties only reached a settlement after Plaintiffs and Defendant analyzed the extent of damages and the strengths and weaknesses of the respective Parties' various claims and defenses. Considering the merits, risks, and costs involved, the Parties believe settlement, on the terms set forth herein, is in the best interest of their

respective clients. Counsel have also discussed the terms of the proposed Settlement with the Named Plaintiffs, who believe the Settlement to be in the best interest of the Class members.

On April 4, 2014, the Court granted preliminary approval of the Settlement, and ordered notice to the class be given. Gilardi & Co., LLC ("Gilardi") is the Settlement Administrator in this action. *See* Declaration of Adrien Bizouarn ("Bizouarn Decl.") ¶ 1. Gilardi mailed a Notice Packet to 2,572 names on May 5, 2014. *Id.* at ¶ 3. On June 9, 2014, Gilardi received 27 more names from defense counsel that were left off the original class list. *Id.* at ¶ 4. Gilardi mailed a Notice Packet to those 27 names on June 13, 2014. *Id.* Combined, that yields a class size of 2,599 members.

Class Counsel and Defendant have, through arms-length negotiations, agreed that Class Counsel will request the Court's approval of service awards for the Named Plaintiffs in the amount of $15,000, with no deductions, for those Named Plaintiffs whose depositions were taken in the Action. This applies to Alexandra Avery, Julie Ross, Maileen Aguilar, and Denise Nolfo. They have further agreed that Class Counsel will request the Court's approval of service award of $10,000, with no deductions, per Named Plaintiff for those Named Plaintiffs whose depositions were not taken in the Action. This applies to Minoosh Zarrinnegar, Gwendolyn Cade, Ruth Calderon, and Jamie Ann Gebler. *Id.* at p.7.

Defendant and Plaintiffs have, through arms-length negotiations, reached a basic agreement on the terms of the settlement for the class, and agreed that Class Counsel will request that the Court approve an award of costs and attorneys' fees to be paid to Class Counsel in the total amount of not more than $4,350,000 and costs not to exceed $70,000. *See* Joint Stipulation of Class Action Settlement And Release ("Joint Stip") at p. 14.

This is a non-reversionary settlement. From the $14,500,000 total, Gilardi made deductions for (a) attorneys' fees ($4,350,000); (b) attorneys' costs ($70,000); (c) named plaintiff awards ($100,000); (d) estimated employer-side tax obligations ($895,958.32); and (e) administration costs ($56,763). Bizouarn Decl. ¶ 13. The remaining amount set to be paid directly to class members is $9,027,278.68. *Id.* This amount is referred to as the "Net Settlement

Fund." The estimated maximum claim value is $30,119.11, and the estimated average claim value is $3,474.70. *Id.*

Class members submitted timely claims for over 92% of the amount available. *See* Coughlin Dec. ¶ 5. Because most, but not all, Class Members made claims and the scheduled payments to Participating Class Members total less than 100% of the Net Settlement Fund, the value of each Participating Class Member's Gross Individual Settlement Amount shall increase proportionately until the Net Settlement Fund is exhausted. *See* Joint Stip at pp. 17-18. This means that all class members who made claims will receive slightly more than the estimated amount provided on the notice to those class members.

Pursuant to the Settlement, all regular and overtime wages that were earned prior to November 22, 2010 by a Class Member while working during the Class Period and also during the Period of Coverage under a Collective Bargaining Agreement shall be reduced by 25% in calculating the Class Member's percentage of the Net Class Settlement Fund. *Id.* The Parties agree that the appropriate treatment of individual payment is 50 percent wages and 50 percent interest penalties. *Id.* at p. 18

A. Class Notice

As stated above, Gilardi is the Settlement Administrator in this action. Bizouarn Decl. ¶ 1. Gilardi mailed a Notice Packet to 2,572 current and former employees on May 5, 2014. *Id.* at ¶ 3. On June 9, 2014, Gilardi received 27 more names from defense counsel that were left off the original class list. *Id.* at ¶ 27. Gilardi mailed a Notice Packet to those 27 names on June 13, 2014. *Id.* Combined, that yields a class size of 2,599 members.

Prior to mailing the Class Notice, Defendant ran a complete check of all addresses for the Class Members using Defendant's records and the National Change of Address Database. *See* Bizouarn Decl. at ¶ 6; Joint Stip at ¶ 14(a). From that investigation Defendant was able to assemble a mailing list of the most up to date addresses for the Class Members. Bizouarn Decl. ¶ 6. In addition, during that process Defendant received some packets with a forwarding address. *Id.* at ¶ 5. Defendant immediately re-mailed the Notice Packets to the forwarding address supplied by USPS. *Id.* Moreover, since mailing the Notice Packets to the class members,

Defendant received 333 Notice Packets with undeliverable addresses. *Id.* at ¶ 6. Through a third party locator, Defendant was able to find updated addresses for 266 of the class members, and then re-mailed Notice Packets to those class members. *Id.*

B. No Class Members Opt-Out or Object and Over 77% of Them Submitted Claims

Under the Parties' proposed settlement, and the Court's Preliminary Approval Order, Class Members had the opportunity to opt-out of the Agreement or to object to the Agreement. Class Members were permitted to opt-out by sending a written request for exclusion from the class to counsel for Defendant postmarked on or before **June 19, 2014** (or **July 28, 2014** for the supplemental mailing).

Class Members also had an opportunity to object to the proposed settlement. Under the terms of the Agreement, and the Court's Preliminary Approval Order, Class Members who wished to object were required to file with the Court and serve on counsel for the parties a written statement objecting to the settlement, on or before those same dates. Under the terms of the Settlement, Class Members who fail to file and serve timely written objections in the manner specified in the Settlement will be deemed to have waived any objections and will be foreclosed from making any objection (whether by appeal or otherwise) to the settlement.

There have been **zero** opt-outs and **zero objections** to the Settlement. *See* Coughlin Decl. ¶ 5; Bizouarn Decl. ¶¶ 14-15.

IV. LEGAL STANDARD

"[T]o prevent fraud, collusion or unfairness to the Class, the settlement or disapproval of a class action requires court approval." *Outrigger Board of Governors v. Superior Court* (1980) 103 Cal. App. 3d 573, 578-79 (citation, quotations omitted.) The court is required to determine whether the proposed class action settlement is fair, adequate, and reasonable. *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801 ("*Dunk*").

At the final approval stage, the Court must decide whether the proposed settlement is fair, adequate, and reasonable as a whole. *Dunk*, 48 Cal. App. 4th at 1801; *see also*, *Wershba v. Apple*

Computer, Inc. (2001) 91 Cal. App. 4th 224, 234 ("*Wershba*"); *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1145 ("*7-Eleven Owners*").

The court has broad discretion in determining whether a proposed class action settlement is fair. *Rebney v. Wells Fargo Bank* (1990) 220 Cal. App. 3d 1117, 1138. As the Ninth Circuit has explained:

> . . . [t]he district court's decision to approve or reject a settlement is committed to the sound discretion of the trial judge because he is exposed to the litigants, and their strategies, positions, and proof. *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026 [internal quotations and citations omitted]. Thus, [the appellate court] will affirm if the district court judge applies the proper legal standard and his [or her] findings of fact are not clearly erroneous. *See In re Pacific Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 377.

In re Mego Financial Corp. Securities Litigation (9th Cir. 2000) 213 F.3d 454, 458.[1] Accordingly, "[r]eview of the [trial] court's decision to approve a class action settlement is extremely limited." *Id.* The trial court's decision will be reversed only for a "clear abuse" of that discretion. *Wershba*, 91 Cal. App. 4th at 235; *7-Eleven Owners*, 85 Cal. App. 4th at 1145-46; *Dunk*, 48 Cal. App. 4th at 1801-02.

Moreover, in exercising this discretion, the court must generally give "[d]ue regard . . . to what is otherwise a private consensual agreement between the parties." *Dunk*, 48 Cal. App. 4th at 1801. The court's inquiry "'must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable, and adequate to all concerned.'" *Id.* (internal citation omitted).

In California, the relevant factors to be considered by the Court in determining whether to approve a class settlement include the strength of Plaintiff's case, the risk, expense, complexity, and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the state of the

[1] In resolving issues relating to class actions, California Courts frequently look for guidance to Rule 23 of the Federal Rules of Civil Procedure and – to the extent they are not inconsistent with California Jurisprudence – to federal cases applying Rule 23. *Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 821; *Green v. Obledo* (1981) 29 Cal. 3d 126, 145-46; *Dunk*, *supra*, 48 Cal. App. 4th at 1801, FN 7.

proceedings, the experience and view of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. *Wershba*, 91 Cal. App. 4th at 244-45. This list of factors is not exclusive, and the trial court is free to engage in a balancing and weighing of factors, depending on the circumstances of each case. *Id.* at 245. The Court is not, however, to engage in a mini-trial of the merits. As explained in *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116:

> We do not suggest that the court should attempt to decide the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys. However, as the court does when it approves a settlement as in good faith under Code of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within the "ballpark" of reasonableness.

Id. at 133 (citing *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal. 3d 488, 499–500).

V. ARGUMENT

A. The Settlement Enjoys a Presumption of Fairness

The Court should begin its final-approval analysis with a presumption that the proposed settlement is fair, under the circumstances. "'[A] **presumption of fairness** exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.'" *Wershba*, 91 Cal. App. 4th at 245, quoting *Dunk*, 48 Cal. App. 4th at 1802 (emphasis added). Each of these criteria is satisfied here.

1. The Settlement was Reached through Arms-Length Negotiations Overseen by an Experienced Wage and Hour Mediator

This settlement was reached through arms-length settlement negotiations, overseen by experienced and well-regarded mediator, Mr. Steven J. Rottman, Esq. *See* Coughlin Decl. ¶ 25. Moreover, the Parties, together with Mr. Rottman, participated in several months of significant settlement discussions to resolve the issues involved and to formulate an action plan. *See id.* at ¶¶ 26-28. During these discussions, the parties fought extensively over every significant term of the proposed Settlement Agreement. *Id.*

2. The Parties Entered into the Settlement with Substantial Knowledge and Information as a Result of Investigation and Discovery

The parties conducted significant investigation and discovery. Counsel has conducted extensive research of the issues presented; conducted witness interviews; consulted with other attorneys; met and conferred with opposing counsel; and propounded numerous sets of special interrogatories, supplemental interrogatories, and document production requests. Counsel also reviewed payroll records for all class members and analyzed payroll documents, various time records, collective bargaining agreements, policies, and other records provided by IHHI. Counsel took various depositions, including the deposition of Defendant's person most knowledgeable. Defendant deposed four of the Named Plaintiffs.

There has therefore been extensive formal and informal discovery to inform Counsel and support their assessment that this Settlement is fair. Counsel has conducted extensive legal research regarding important aspects of the case to evaluate the benefits to the Class of settlement versus continued litigation. Counsel has also discussed the terms of the proposed Settlement with the Named Plaintiffs, who believes the Settlement to be in the best interests of the Class Members.

Given the merits, the risks, costs, and uncertainty of continued litigation, and the value of the settlement for the Class and for judicial economy, Class Counsel believes settlement on the terms set forth herein is in the best interest of the class. Further, all counsel, as well as the Named Plaintiffs, are well-informed on the nature of the claims and defenses and are in a position to evaluate the proposed Settlement for fairness. Coughlin Decl. ¶ 60

3. The Litigation and Settlement were Reached by Counsel with Significant Experience in Wage and Hour Class Actions

The settlement proceedings and negotiations themselves were conducted by counsel experienced in consumer class actions and other complex litigation. *See e.g.*, Declaration of Eric Buescher ("Buescher Decl.") ¶ 5; Declaration of Jerry K. Cimmet ("Cimmet Decl.") ¶ 4; Coughlin Decl. ¶¶ 51-58 Class Counsel has extensive experience in similar cases and believes that the proposed Settlement is adequate, reasonable, fair, and in the best interests of all class members. Counsel for both sides have each handled multiple pay plan type cases, including

multiple cases with the very same California Differential Pay plan. This investigation and discovery has resulted in a Stipulation and Settlement that is strongly rooted in the factual circumstances of the case and is fair, adequate, and reasonable under all the circumstances.

Plaintiffs' Counsel includes Cotchett, Pitre & McCarthy, LLP ("CPM"), Frank J. Coughlin, A Professional Law Corporation, Jerry K. Cimmet, Law Offices of John M. Kelson and Gerald M. Werksman. CPM is nationally recognized as one of the premier advocates for employees subjected to violations of state and federal workplace laws. CPM is trained and experienced to represent clients in complex class actions involving employment issues and wage and hour violations.

Additionally, Mr. Coughlin of Frank J. Coughlin, APLC has been a licensed attorney for more than twenty years and has represented both plaintiffs and defendants in class action matters, and on state court appeals and appeals in the Ninth Circuit. He has extensive experience prosecuting wage and hour class action litigation and has been appointed class counsel in both state and federal courts and has handled numerous pay plan cases at trial and appellate court. Jerry K. Cimmet and John M. Kelson have extensive experience in class action and complex litigation and have appeared as class counsel in well over 20 such cases, including the prosecution of numerous wage and hour cases in state and federal courts, as shown by their curricula vitae attached to the declaration of Justin Berger. Gerald Werksman is likewise an experienced trial attorney who has appeared as counsel in a number of class actions. Counsel, therefore, are in a qualified position to evaluate the risks and benefits of both litigation and settlement, and hereby recommends this Settlement as fair and reasonable to all parties.[2]

4. The Class Members' Reaction was Overwhelmingly Positive

Finally, there are **no objections or opt-outs** to the proposed settlement. Where, as here, the reaction of the class is overwhelmingly positive, the law strongly favors final approval. Not

[2] The experience and resumes of Class Counsel are contained in the Declarations of Coughlin, ¶¶ 51-58; Buescher ¶ 4; Cimmet, Exh. 1; Kelson, Exh. 1; Werksman ¶¶ 2-4 filed herewith, as well as having been previously submitted to the Court in connection with Plaintiffs' Motion for Preliminary Approval of the Settlement.

only where there not opt outs or objections, but over 77% of eligible class members submitted claims, and over 92% of the fund was claimed. Coughlin Decl. ¶ 5.

For all of the above reasons, it is appropriate for the Court to ***presume*** that the proposed settlement is fair. As explained below, further analysis only confirms this presumption.

B. Addition Relevant Criteria Confirm the Settlement is Fair and Reasonable

In addition to satisfying all criteria of presumptive fairness, the settlement meets all relevant indicia that it is fair, reasonable, and adequate to all concerned. *See Wershba*, 91 Cal. App. 4th at 244-45.

1. The Settlement Consideration Is Fair And Substantial

In assessing the fairness, reasonableness, and adequacy of a proposed settlement, the Court must balance the benefits afforded to the Class, and the immediacy and certainty of a substantial recovery for them against the continuing risks of litigation. *See Wershba*, 91 Cal. App. 4th at 244-45. Here, the benefits to the Class are clear, demonstrable, immediate, and substantial. The proposed settlement provides for reimbursement for significant sums of money. The average recovery to class members is approximately $3,470, with claims being made for up to $30,119.11. *See* Bizouarn Decl. ¶ 13.

2. The Settlement Enjoys Overwhelming Class Support

It is appropriate for the Court to conclude that the settlement is fair, adequate, and reasonable when few Class Members object to it. *See Wershba*, 91 Cal. App. 4th at 244-45; *Hanlon v. Chrysler Corp.*, 150 F.3d at 1027 ("the fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness"). Defendant sent 2,599 Class Notices to the Class Members, and all Class Members had the opportunity to opt out of the class. *See* Bizouarn Decl. ¶¶ 3-6, 14. Zero class members opted out, and none objected. Over 77% of the class members made claims, claiming over 92% of the available fund. Coughlin Dec. ¶ 5. Here, the overwhelmingly favorable response by the Class demonstrates that final approval of the settlement is appropriate.

3. The Settlement Extinguishes the Risk, Expense, and Duration of Further Litigation

By settling, Named Plaintiffs and the Class Members avoided the delays and risks of further litigation. Plaintiffs would nonetheless face many risks in continuing to litigate this case. IHHI opposed this case from the outset, denying any wrongdoing or legal liability arising out of any of the facts or conduct alleged in Plaintiffs' Complaint. IHHI continues to deny that Plaintiffs and the Class have suffered damage that IHHI violated the laws regarding overtime compensation. IHHI also denies engaging in any unlawful or wrongful conduct. IHHI is represented by skilled and tenacious counsel and have vigorously denied liability and defended this case. Plaintiffs would have had to certify a class and defeat any attempts to decertify the class, defeat a motion for summary judgment and succeed at trial to obtain a successful result without a settlement.

If Defendant were to succeed on any of its arguments or at any of those stages, the value of Plaintiffs' claims would be reduced drastically. Moreover, bringing this litigation to a conclusion would likely take several more years. During this time, both parties would incur substantial attorneys' fees and costs and class members would continue to wait for overtime payments they have been owed for over five years.

Under the Settlement, Class Members will receive benefits that are both immediate and certain, thus avoiding the many obstacles that might have prevented them from obtaining relief through class certification, trial and/or appeal. Given the risks of continued litigation, and the substantial benefits of the proposed settlement, final approval of the settlement is warranted.

/ / / / /

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval of the Settlement.

Dated: July 18, 2014

COTCHETT, PITRE & McCARTHY, LLP

By: */s/ Justin T. Berger*

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