David S. Harris (SBN 215224)
NORTH BAY LAW GROUP
116 E. Blithedale Avenue, Suite #2
Mill Valley, California 94941-2024
Telephone: 415.388.8788
Facsimile: 415.388.8770
dsh@northbaylawgroup.com

James Rush (SBN 240284)
LAW OFFICES OF JAMES D. RUSH
7665 Redwood Blvd., Suite 200
Novato, California 94945-1405
Telephone: 415.897.4801l
Facsimile: 415.897.5316
jr@rushlawoffices.com

Attorneys for Plaintiffs
CORAL MCQUEEN and FELICIA TREVINO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CORAL MCQUEEN and FELICIA TREVINO, individually and on behalf of all others similarly situated,

Plaintiff,

v.

ODD FELLOWS HOME OF CALIFORNIA, a California corporation, and DOES 1-100,

Defendants.

Case No. C-26-64176

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS-ACTION SETTLEMENT;

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Assigned to the Honorable Diane M. Price

Date: November 19, 2015
Time: 8:30 a.m.
Place: Dept. F

TO EACH PARTY AND TO EACH PARTY'S ATTORNEY OF RECORD: NOTICE IS HEREBY GIVEN that, on November 19, 2015, at 8:30 a.m., or as soon thereafter as counsel may be heard, in Department F of the above-entitled Court located at 1111 Third Street, Napa, California, 94559, Plaintiffs Coral McQueen and Felecia Trevino ("Plaintiffs") will move for an order granting final approval of the class-action settlement reached in the above-captioned matter. The Motion will be made and based upon this Notice of Motion; the accompanying Memorandum of Points and Authorities; the concurrently filed Declaration of David S. Harris; the concurrently filed Declarations of Plaintiffs; the concurrently filed Declaration of Melissa Meade; all of the pleadings, papers, and documents contained in the file of the within action; and such further evidence and argument as may be presented at or before the determination of the Motion.

DATED: October 26, 2015

NORTH BAY LAW GROUP
LAW OFFICES OF JAMES D. RUSH

David S. Harris
James D. Rush
Attorneys for Plaintiffs

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I. Introduction.

This Court should grant final approval of the Stipulation of Class Action Settlement and Release ("Settlement") entered between Plaintiffs Coral McQueen and Felicia Trevino ("Plaintiffs"), on behalf of the absent Class Members whom they seek to represent, on the one hand, and Defendant Odd Fellows Home of California ("Defendant" or "Odd Fellows"), on the other hand. Given the uncertainty and risks faced by Plaintiffs and Odd Fellows, the $729,700 Settlement—which will result in an average pre-tax payment of approximately $513 to each participating Class Member—is fair, adequate, and reasonable.[1] The Settlement should therefore be approved.

II. Summary of the Case.

The above-captioned matter was commenced by Plaintiffs as a class action lawsuit in Napa County Superior Court on May 23, 2014, on behalf of Plaintiffs and all others similarly situated for alleged violations of the California Labor Code. (See generally May 23, 2014, Compl.) On July 23, 2014, Plaintiffs filed a First Amended Complaint, the operative pleading. (See generally July 23, 2014, First Am. Compl.) As alleged in the First Amended Complaint, Defendant employed Plaintiffs as hourly "employees in the public housekeeping industry," as that term is defined in the Industrial Wage Commission ("IWC") Wage Order number 5. (July 23, 2014, First Am. Compl. ¶ 6.)

In the First Amended Complaint, Plaintiffs allege the following violations: (1) Cal. Lab. Code § 203 (Continuing Wages); (2) Cal Lab. Code §§ 226.7 and 512; Wage Order 5 (Meal Period Violations); (3) Cal Lab. Code § 226.7; Wage Order 5 (Rest Period Violations); (4) Cal. Lab. Code § 204 (Late Payment of Overtime Wages); (5) Cal. Lab. Code §§ 510 and 1194 (Overtime violations); (6) Cal. Bus. & Prof. Code section 17200 *et seq.* (Restitution and Injunction); (7) Cal. Lab. Code § 226 (Failure to Provide Accurate Itemized Wage Statements); and (8) Labor Code Private Attorneys General Act ("PAGA") (Civil Penalties on account of labor law violations). (See generally July 23, 2014, First Am. Compl.)

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[1] As of October 23, 2015, there were 411 valid Claims received by the Claims Administrator. (See Declaration of Melissa Meade On Behalf of Claims Administrator With Respect To Claims, Opt Outs, and Objections Received ("Meade Decl.") ¶ 10.)

In general, and as set forth in detail in the Motion for Preliminary Approval of Class-Action Settlement, the Plaintiffs' claims relate to allegations that (1) Defendant failed to provide employees with proper rest and meal breaks, (2) Defendant failed to properly calculate employees' overtime wages for hours worked in excess of eight in a day, and (3) Defendant failed to provide employees with adequate pay statements. (See generally July 23, 2014, First Am. Compl.) The operative First Amended Complaint also seeks miscellaneous penalties, including waiting time penalties pursuant to California Labor Code section 203, civil penalties pursuant to California Labor Code sections 226 and 2698 *et seq.*, and additional relief under the California Business and Professions Code section 17200 *et seq*.). (July 23, 2014, First Am. Compl.)

Defendant contends that it has complied with all applicable laws, including, but not limited to, those relating to payment of wages, hours worked, meal-and-rest breaks and the provision of accurate wage statements. Defendant vigorously disputes all material allegations and all claims for damages and other relief made by Plaintiffs in the Complaint and the First Amended Complaint, or otherwise asserted during the course of the litigation of this action.

Between the filing of the case in May 2014 and the parties' mediation, the parties engaged in substantial investigation, as well as formal and informal discovery in connection with the litigation. (Decl. of David S. Harris in Supp. of Final. Appr. of Class-Action Settlement ("Harris Decl.") ¶ 6.) Defendant provided extensive documents and thousands of pages of documentation and putative class data to Plaintiffs and their counsel to review and analyze. (Harris Decl. ¶ 6.) This information included summary employment data for the entire putative class, Defendant's policies and documents relevant to the issues and claims in the instant litigation, and a statistically-significant sampling of full payroll and hourly employee punch data for the putative class. (Harris Decl. ¶ 6.) Counsel for each side interviewed numerous witnesses, and Defendant obtained numerous declarations from employee witnesses. (Harris Decl. ¶ 6.) Plaintiffs' counsel and its staff spent hundreds of hours reviewing the payroll information and hourly employee punch data that was provided by Defendant in order to analyze the claims and prepare for mediation. (Harris Decl. ¶ 6.)

On May 29, 2015, the parties participated in an all-day mediation with an experienced mediator, Mr. Jeffrey Krivis, in downtown San Francisco. (Harris Decl. ¶ 7.) With the assistance of Mr. Krivis,

the parties ultimately reached an arms-length settlement, which was preliminarily approved by this Court on August 21, 2015. (Order Granting Preliminary Approval of Class-Action Settlement ("Preliminary Approval Order") at ¶ 1 ("The Court hereby preliminarily approves the Settlement as being within the range of possible approval and as disclosing no grounds to doubt its fairness."))

III. Summary of the Proposed Settlement.

A. The Settlement Class.

In connection with preliminarily approving the Settlement, the Court conditionally certified a Settlement Class consisting of, "all persons who are or previously were employed as non-exempt or hourly employees of Odd Fellows Home of California between May 23, 2010 and May 29, 2015." (Preliminary Approval Order at ¶ 2.)

On September 15, 2015, the Court-appointed Claims Administrator, Phoenix Settlement Administrators ("PSA"), mailed Class Notices to 971 Class Members in accordance with the Court's Order. (See Declaration of Melissa Meade On Behalf of Claims Administrator With Respect To Claims, Opt Outs, and Objections Received ("Meade Decl.") at ¶¶ 5-7.) The period to submit completed Claim Forms, requests to be excluded from the Settlement, and objections to the Settlement will expire on October 30, 2015. (Meade Decl., ¶ 15.)

As of the filing of this Motion, a total of 411 Class Members have submitted valid Claim Forms. (Meade Decl. ¶ 10.) Only one Class Member filed a request for exclusion. (Meade Decl. ¶ 11.) Importantly, no Class Member has filed an objection to the Settlement.[2] (Meade Decl. ¶ 12.)

B. The Settlement Fund and the Payment of Claims.

According to the terms of the Settlement preliminarily approved by the Court, the settlement fund shall be used to pay the following: (a) payments to the individual members of the Settlement Class, (b) attorneys' fees and costs (as awarded by the Court), (c) the fees and costs of the Claims Administrator for providing Notice to the Class and for administering the Settlement (as awarded by the Court), (d) enhancement payments to Plaintiffs for their services in connection with bringing and maintaining this action (as awarded by the Court), and (e) civil penalties to the California Labor and

[2] In order to allow all postmarked claims to be received and processed, the Claims Administrator will file a Supplemental Declaration with the Court on November 16, 2015, with final information regarding the number of valid claims, requests for exclusion and objections that were timely received.

Workforce Development Agency ("LWDA") on account of alleged civil penalties pursuant to California Labor Code section 2699, the Private Attorneys General Act ("PAGA") (as awarded by the Court).

By way of this Motion, Plaintiffs request that the Court award the amounts set forth in the Motion for Preliminary Approval – which include the requested $5,000 enhancement payments to each of the Plaintiffs, $12,780.00 for costs of administration to Phoenix Settlement Administrators, a $10,000 PAGA payment, $243,200 in attorneys' fees and attorney costs in the amount of $9,687.28. Under the terms of this settlement, Class Members who submitted Claim Forms will receive an average pre-tax payment of $513.38, which is a very favorable recovery for participating class members, especially in light of the challenges inherent in certifying this case for class-wide treatment. (Harris Decl., ¶ 10.)

C. The Civil-Penalty Payment to the State of California.

The Settlement provides for a payment of $10,000 in settlement of the civil penalties owing on account of the alleged labor law violations, which is payable to the California Labor and Workforce and Development Agency. (Settlement 2:18-20) Civil penalties recovered as part of a proposed settlement are subject to court approval. See Cal. Lab. Code § 2699(l) ("The superior court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part."). This Court may approve the payment to the State without regard to whether any class-action requirements have been satisfied. See Arias v. Superior Court, 46 Cal. 4th 969, 975 (2009) ("We hold that an employee who, on behalf of himself and other employees, sues an employer under the unfair competition law (Bus. & Prof. Code, § 17200 *et seq.*) for Labor Code violations must satisfy class action requirements, but that those requirements need not be met when an employee's representative action against an employer is seeking civil penalties under the Labor Code Private Attorneys General Act of 2004 (Lab. Code, § 2698 *et seq.*).").

Because holding Defendant liable for civil penalties would necessitate a finding that Defendant violated various sections of the Labor Code, Plaintiff contends that the $10,000 civil-penalty settlement is fair and adequate. Indeed, courts "may award a lesser amount than the maximum civil penalty specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Cal. Lab. Code § 2699(e)(2). The proposed $10,000 PAGA payment is significant and should be awarded to the LWDA

as civil penalties under PAGA.

D. Release of Claims.

The Settlement provides for a limited release of only those claims asserted in the operative Complaint. More specifically, the Settlement provides that Plaintiffs and those Class Members who do not opt out of the Settlement will be deemed to release Defendant and its related entities[3] (collectively, "Class Members' Released Parties") from all "Class Members' Released Claims," defined as:

> The claims released by the Class Members include, but are not limited to, statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief, for the following categories of allegations: (a) all claims for failure to pay wages for hours worked, including overtime and double time pay; (b) all claims for failure to pay the minimum wage in accordance with applicable law; (c) all claims for the failure to provide meal and/or rest periods in accordance with applicable law, including payments for missed meal and/or rest periods and alleged non-payment of wages or premium pay for meal periods and rest periods worked and not taken; (d) all claims for the unlawful and/or fraudulent deductions of wages from employees as a result of Odd Fellows payroll and timekeeping policies and procedures; and (e) any and all claims for recordkeeping or pay stub violations, waiting time penalties and all other civil and statutory penalties related to the above-referenced claims, including those recoverable under the PAGA, the California Unfair Competition Act, and in particular, California Bus. & Prof. Code §§ 17200 *et seq.*, California Code of Civil Procedure § 1021.5; and any other provision of the California Labor Code or any applicable California Industrial Welfare Commission Wage Orders, in all of their iterations.

(Settlement at 6:8-24.)

IV. The Notice Procedure and Claims Administration.

This Court approved the form and content of the Class Notice used to inform Class Members of their rights concerning participation in the Settlement. (Preliminary Approval Order ¶ 5.) The Court appointed Phoenix Settlement Administrators to act as the Claims Administrator. (Preliminary Approval Order ¶ 3.) Pursuant to the Court's Preliminary Approval Order, the Claims Administrator mailed Class Notice and Claim Forms to Class Members on September 15, 2015. (Meade Decl. ¶ 7, Ex. A.)

The form of Notice and the means of disseminating it to the Class satisfy the California Rules of Court. Rule 3.766 states:

[3] "Class Members' Released Parties" shall mean Defendant Odd Fellows Home of California and its former and present parents, subsidiaries, and affiliates, and their current and former officers, directors, employees, partners, shareholders and agents, and the predecessors and successors, assigns, and legal representatives of all such entities and individuals. (Settlement at 6:3-7.)

> The content of the class notice is subject to court approval. If class members are to be given the right to request exclusion from the class, the notice must include the following: (1) A brief explanation of the case, including the basic contentions or denials of the parties; (2) A statement that the court will exclude the member from the class if the member so requests by a specified date; (3) A procedure for the member to follow in requesting exclusion from the class; (4) A statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and (5) A statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel.

Cal. R. Court 3.766(d). Similarly, Rule 3.769 states:

> If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.

Id. R. 3.769(f). A review of the Notice disseminated to Class Members reveals that it explained Plaintiffs' contentions and Defendant's denials, described the procedure for opting out and objecting, stated that any judgment would bind those who did not opt out, and stated that Class Members had the right to enter an appearance through their own counsel. (See Meade Decl., Ex. A.) The Notice thus satisfies all necessary requirements, resulting in the best practicable notice under the circumstances. See Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 811–12 (1985) (explaining that "best practicable" notice provides a description of the litigation and an explanation of the right to opt out or object); In re Cellphone Fee Termination Cases, 186 Cal. App. 4th 1380, 1390–91 (2010) (upholding a short-form notice that simply directed class members to a website for full details of a settlement).

As noted above, through October 23, 2015, 411 Class Members submitted valid Claim Forms. (Meade Decl. ¶ 10.) According to the Claims Administrator, one Class Member timely requested exclusion from the Settlement, and, most importantly, no Class Members objected. (Harris Decl. ¶ 11; Roe Decl. ¶¶ 11-12.) The lack of objections speaks to the fairness of the Settlement. See, e.g., Stoetzner v. U.S. Steel Corp., 897 F.2d 115, 118–19 (3d Cir. 1990) (explaining that 29 objections out of a 281-member class "strongly favors settlement"). Here, there are no objections.

V. The Settlement Is Fair, Reasonable, and Adequate.

The Court has already found that the Settlement is "within the range of possible approval." (Preliminary Approval Order ¶ 1.) The Settlement provides a meaningful benefit to qualifying Class Members—an approximate average pre-tax settlement payment of $513 to the 411 participating Class

Members who have already filed valid Claims—which is a very favorable recovery for the claims at issue in this case. (Meade Decl. ¶14, Harris Decl. ¶10.)

Court approval is required for any settlement of a class action. See Cal. R. Court 3.769; In re Cellphone Termination Fee Cases, 180 Cal. App. 4th 1110, 1117–18 (2009). Trial courts have broad powers and discretion to determine whether proposed class settlements should be approved. 7-Eleven Owners for Fair Franchising v. Southland Corp., 85 Cal. App. 4th 1135, 1146 (2000); Dunk v. Ford Motor Co., 48 Cal. App. 4th 1794, 1801 (1996); Mallick v. Superior Court, 89 Cal. App. 3d 434, 438 (1979). The ultimate test for final court approval of a class settlement is whether the agreement "is fair, reasonable, and adequate." Wershba v. Apple Computer, Inc., 91 Cal. App. 4th 224, 245 (2001). In this regard, the California Court of Appeal explains:

> The trial court must determine whether a class action settlement is fair and reasonable, and has broad discretion to do so. That discretion is to be exercised through the application of several well-recognized factors. The list, which "'is not exhaustive and should be tailored to each case,'" includes "'the strength of plaintiffs' 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 stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.'" """The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement."""

Clark v. Am. Residential Servs. LLC, 175 Cal. App. 4th 785, 799 (2009) (internal citations omitted). See also Chavez v. Netflix, Inc., 162 Cal. App. 4th 43, 52 (2008). An informed evaluation of a proposed settlement also requires "an understanding of the amount in controversy and the realistic range of outcomes of the litigation." Clark, 175 Cal. App. 4th at 801 (citing Kullar v. Foot Locker Retail, Inc., 168 Cal. App. 4th 116, 120 (2008)).

As a threshold matter, a class settlement is *presumed* to be fair when "'(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.'" 7-Eleven Owners for Fair Franchising, 85 Cal. App. 4th at 1146 (quoting Dunk, 48 Cal. App. 4th at 1802). Additionally, in evaluating the fairness of a settlement, "[d]ue regard should be given to what is otherwise a private consensual agreement between the parties." Dunk, 48 Cal. App. 4th at 1801. Accordingly, a court should take into account the informed recommendations of counsel

and the parties. Vulcan Soc'y of Westchester County, Inc. v. Fire Dep't of the City of White Plains, 505 F. Supp. 955, 961 (S.D.N.Y. 1981). As explained below, this case has been handled by experienced class-action counsel on all sides, who conducted arms-length settlement negotiations and eventually reached agreement on an overall amount that was fair and reasonable. Indeed, respective counsel and their clients are in agreement both that the proposed settlement is fair, adequate, and reasonable, and that the chosen distribution mechanism ensures an appropriate allocation of the overall Settlement. (See Harris Decl. ¶¶ 8-9.)

A. Strengths and Weaknesses of the Action.

As set forth in detail in Plaintiff's Motion for Preliminary Approval of Class-Action Settlement, given the reasonable arguments that can be made by both Plaintiffs and Defendant, settlement was an attractive option for both sides. In general, Plaintiffs contend that Defendant violated the California Labor Code by failing to provide Class Members with proper and timely overtime wages, failing to provide proper meal and rest breaks, failing to pay all final wages owed to discharged employees in a timely fashion and failing to issue pay stubs that contain all required information. Defendant vigorously disputes all of Plaintiffs' contentions.

Settlement is an attractive option with respect to Plaintiffs' unpaid-overtime and meal-and-rest-break claims. As set forth in Plaintiffs' Motion for Preliminary Approval, Plaintiffs' counsel has reviewed the extensive materials provided by the defense, (Harris Decl. ¶ 6), and acknowledges that some may argue that any unpaid overtime and the number of breaks missed by any given Class Member may require a rather individualized inquiry, with a result that class certification might be denied on this claim.[4]

Settlement is also an attractive option with respect to Plaintiffs' claim under section 203 of the

[4] It is submitted that the United States Supreme Court's recent ruling in Wal-Mart Stores, Inc. v. Dukes, 131 S. Ct. 2541, 2011 U.S. Dist. LEXIS 4567 (June 20, 2011), may now make it more difficult to certify classes seeking both injunctive relief and monetary relief. Id. at *38. In this action, Plaintiff seeks monetary relief under the California Labor Code and also injunctive relief under section 17200 of the California Business and Professions Code. (See generally June 28, 2011, First Am. Compl.) According to Wal-Mart Stores, Inc., any putative class action seeking both injunctive relief and monetary relief is now required to demonstrate that questions of law and fact common to class members predominate over any questions affecting only individual class members. Id. at *44–45. Although the California Code of Civil Procedure applies here, California courts often look to the Federal Rules of Civil Procedure for guidance. Accordingly, the risk of maintaining this case as a class action through trial has increased as a result of Wal-Mart Store, Inc.

California Labor Code.[5] Under section 203, Plaintiffs must prove that Defendant "willfully" failed to pay final wages in a timely fashion. See Cal. Lab. Code § 203(a). Defendant contends that its behavior was not "willful," and therefore it owes no damages under section 203. See id. In addition, Defendant could assert that section 203, as with all penalty statutes, is strongly disfavored and must be narrowly construed. See Hale v. Morgan, 22 Cal. 3d 388, 405 (1978). Likewise, Defendant could assert the same argument with respect to Plaintiffs' section-226 claim. With respect to Plaintiffs' claim under section 226 of the Labor Code, Plaintiffs' counsel is aware that Defendant has arguable defenses with respect to whether such violations merit awarding each employee any statutory damages, namely, that such violations are purely technical in nature, that they are derivative of the other claims in this action, that Defendant substantially complied with section 226, that none of Defendant's employees was actually injured by Defendant's alleged violation, and that Defendant's alleged violation was neither knowing nor intentional. Cf., e.g., Milligan v. American Airlines, 327 Fed. Appx. 694 (9th Cir 2009).

B. The Risk, Expense, Complexity, and Duration of Class Litigation.

As a class action, this case presented a clear risk of lengthy and expensive litigation. Defendant denies that the litigation would have been appropriate for class treatment under section 382 of the California Code of Civil Procedure, except pursuant to a settlement. This action was first commenced on May 2014, and by the time the Court hears this Motion, the parties will have been litigating the matter for one and one-half years. It would most likely be at least another year before this case even went to trial. In the absence of settlement, the parties would have to complete discovery, Plaintiffs would have to file a motion for class certification, and the parties would file cross-motions for summary

[5] It is far from settled whether the failure to pay overtime wages or wages on account of foregone meal and rest breaks results in continuing-wages liability. See Hon. Ming W. Chin, et al., California Practice Guide: Employment Litigation ¶ 11:1464.1 (The Rutter Group 2008) ("Employers may argue that because 'wages' and overtime pay have different sources, Lab. C. § 203's waiting time penalties for 'wages' do *not* apply to overtime pay [See Earley v. Sup. Ct. (Washington Mut. Bank, F.A.) (2000) 79 CA4th 1420, 1430, 95 CR2d 57, 63—'An employee's right to wages and overtime compensation clearly have different sources'; see also Wilcox v. Birtwhistle (1999) 21 C4th 973, 979, 90 CR2d 260, 264—words and phrases given a particular meaning in one part of a statute must be given same meaning in other parts of the statute; Mamika v. Barca (1998) 68 CA4th 487, 493, 80 CR2d 175, 178—penalty of continued 'wages' for late payment is computed by reference to daily straight-time pay (not overtime)].") (emphasis in original). Cf. Barnhill v. Robert Saunders & Co., 125 Cal. App. 3d 1, 7 (1981) (explaining that liability under section 203 is improper where an employer had deducted a setoff from an employee's final paycheck at a time when the law governing the propriety of setoffs from employees' paychecks was unclear). Insofar as it does not result in continuing-wages liability, the extent of Defendant's liability may be reduced significantly.

judgment—all lengthy and expensive processes.

From the outset, Defendant made it clear that it would vigorously defend itself against Plaintiffs' claims, including opposing class certification. (See Harris Decl. ¶ 6.) Plaintiffs' Counsel carefully reviewed and assessed the state of the law on the payment of an additional hour of pay on missed rest and meal breaks, payment of unpaid overtime, payment of wages to discharged employees, the demonstration of injury on account of defective wage statements, and class certification in California. (See Harris Decl. ¶ 5.) In light of the uncertainty, expense, duration, and complexity of the litigation, Plaintiffs elected to resolve and settle this dispute.

It is the assessment of Plaintiffs' Counsel that, absent settlement, the Class would likely have been certified (if at all) only after a marathon of briefs. Furthermore, Defendant's proffered defenses were likely to have presented a serious challenge to the merits of some of the claims in the case. There was substantial risk and uncertainty in the case with respect to the continuing-wage relief sought pursuant to section 203 of the California Labor Code, as well as with respect to the claim that statutory damages under section 226 could be recovered for defective wage-statements. In addition, it may have been difficult to certify a class on account of unpaid overtime and/or missed rest and meal breaks. It would have been difficult to present evidence and testimony with respect to events that occurred years ago, as witnesses' recollections would not be fresh and documents might be difficult to secure. Simply put, relief for Class Members, if achievable, would have come years from now if the litigation were pursued. The Settlement eliminates that uncertainty and time delay, advances the interests of the Class, and is consistent with the public policies underlying the enforcement of labor laws.

As mentioned above, the negotiated settlement provides relief to the Class in considerably less time than would be required to obtain a judgment after trial. Indeed, to ultimately prevail, the Class would have to be certified, time-consuming and expensive discovery would be needed, Plaintiffs would have to successfully oppose all summary-judgment and other substantive motions, Plaintiffs would have to win at trial, and Plaintiffs would have to survive all post-trial motions and appeals. The cost of these hurdles would be substantial and would take several years. There is no question that on balance, the Settlement – which provides participating Class Members with a very favorable recovery for the claims at issue in this case – greatly outweighs the prospects of proceeding to a trial in the distant future with an

uncertain outcome.

C. The Amount Offered in the Settlement.

Counsel for Plaintiffs and for Defendant conducted serious, good-faith, and non-collusive negotiations to settle this dispute. The parties engaged the services of a private mediator to help bring the matter to closure. (See Harris Decl. ¶ 7.) In the end, a compromise was reached that is now before the Court. The Settlement will create a gross fund of $729,700 to be distributed to participating Class Members, as well as to pay attorneys' fees, enhancement awards, costs of administration and PAGA penalties. On average, participating Claimants will receive an estimated pre-tax payment of $513.38, which is a substantial recovery for participating Class Members. (Meade Decl. ¶ 14.) Indeed, under the Ninth Circuit opinion in Rodriguez v. West Publishing Corp., 563 F.3d 948 (9th Cir. 2009), class settlements of this nature should focus on the recovery of *actual losses* rather than on the recovery of *penalties*, which Defendant construes the relief under sections 203 and 226 to be.[6] Viewed in that light, the Settlement is entirely reasonable.

D. Sufficient Investigation Was Conducted to Allow an Informed Decision.

In this matter, the parties engaged in substantial informal discovery, permitting Plaintiffs to make an informed evaluation of the Settlement. (Harris Decl. ¶¶ 5-6.) Defendant has provided Plaintiffs with relevant information regarding the employment records of Plaintiffs and the Class. (Harris Decl. ¶ 6.) Nevertheless, the law is clear that exhaustive, protracted, and costly discovery need not be conducted in a class action before a settlement can be reached. 7-Eleven Owners for Fair Franchising, 85 Cal. App. 4th at 1150. In other words, "[i]n the context of class action settlements, 'formal discovery is not a

[6] It is submitted that the decision in Rodriguez, an antitrust class-action lawsuit, supports final approval of the Settlement. In Rodriguez, as here, most of the potential damages were funds that are recoverable as penalties: in Rodriguez, threefold "treble damages," Rodriguez, 563 F.3d at 964 (citing 15 U.S.C. § 15(a) ("[A]ny person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws . . . shall recover threefold the damages by him sustained . . . .")); here, penalties for violations of the California Labor Code. Rodriguez teaches that, in considering whether to approve an antitrust class-action settlement, a court can conclude that the settlement is "reasonable even though it evaluate[s] the monetary potion of the settlement based only on an estimate of single damages [rather than treble damages]." Id. at 955. See also id. at 964–66 ("This circuit has long deferred to the private consensual decision of the parties. See Hanlon, 150 F.3d at 1027. Experienced counsel such as those representing all the parties in this case will certainly be aware of exposure to treble damages in an antitrust action. Likewise, the mediator in this case."). Similarly, here, the Court may consider the Settlement based only on an estimate of the actual damages, putting the penalty aspects of the case to the side in the process.

necessary ticket to the bargaining table' where the parties have sufficient information to make an informed decision about settlement" Linney v. Cellular Alaska P'ship, 151 F.3d 1234, 1239 (9th Cir. 1998). Here, there was more than sufficient investigation to warrant the Settlement (Harris Decl. ¶¶ 6, 9.)

E. The Class Was Represented by Competent and Experienced Counsel.

Plaintiffs' Counsel, North Bay Law Group the Law Offices of James Rush, specialize in civil litigation, mostly on behalf of plaintiffs. (Harris Decl. ¶¶ 2–4.) Plaintiffs' Counsel has represented plaintiffs in numerous successful class actions. (Harris Decl. ¶¶ 2–4.) It is the opinion of Plaintiffs' Counsel that the Settlement is fair, adequate, and reasonable. (Harris Decl. ¶ 8.) Furthermore, Plaintiffs' Counsel believe that the funds made available to participating Class Members represent a substantial percentage of the probable monetary relief that would be recovered after the completion of protracted discovery, full trial, and all appeals. (Harris Decl. ¶ 8.)

F. The Notice Program and the Reaction of Class Members.

This Court approved the content of the Class Notice used to inform Class Members of their rights to participate in the Settlement. This Court also approved Phoenix Settlement Administrators to act as the third-party Claims Administrator. The Meade Declaration filed herewith provides the detailed claims-administration report, including a statement that there have been no objections to the Settlement.

VI. Conclusion.

It is respectfully submitted that the Settlement is fair, reasonable, and adequate. Under its terms, based on the Claims that have been submitted through October 23, 2015, participating Class Members will receive $513.38 on average—a substantial amount that represents an extremely favorable recovery for the claims at issue in this case. This settlement is particularly significant in light of the difficulty inherent in certifying this case for class-wide treatment. The Court should therefore grant final approval and order distribution of the Settlement funds.

DATED: October 26, 2015

NORTH BAY LAW GROUP
LAW OFFICES OF JAMES RUSH

David S. Harris
Attorneys for Plaintiffs

PROOF OF SERVICE

I, J. Michael Solano, am a paralegal for the firm representing Plaintiffs herein, I am over the age of eighteen years, and not a party to the within action. My business address is North Bay Law Group, 116 E. Blithedale Avenue, Suite 2, Mill Valley, California 94941.

On October 26, 2015, I served the within document(s):

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS-ACTION SETTLEMENT;

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

I caused such document to be delivered by hand in person to:

N/A

I caused such document to be delivered by e-mail or regular mail:

N/A

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Mark Posard
GORDON & REES LLP
275 Battery Street, Suite 2000
San Francisco, California 94111

I declare under penalty of perjury that the above is true and correct.

Executed on October 26, 2015, at Mill Valley, California.

J. Michael Solano