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individually and on behalf of all similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

Melinda James individually and on behalf
of all similarly situated,

Plaintiff,

vs.

Coolsys Commercial & Industrial Solutions,
Inc.; Source Refrigeration & HVAC, Inc.;
and Does 1-10, Inclusive,

Defendants.

Case No.: 30-2020-01163014-CU-OE-CXC

Hon. Peter Wilson - Dept. CX-102

**PLAINTIFF'S UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

[Declaration of Jonathan M. Lebe, Report re:
Compliance with Court Guidelines, Declaration
of Melinda James, and [Proposed] Order Filed
Herewith]

Hearing Information:

Date: August 5, 2021

Time: 2:00 p.m.

Location: Dept. CX-102

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 5, 2021, in Department CX-102 of the above-entitled Court, located at 751 W Santa Ana Blvd, Santa Ana, CA 92701, Plaintiff Melinda James on behalf of herself and the settlement class members described herein, will and hereby do move for an order: (1) preliminarily approving the proposed class action and Private Attorney General Act ("PAGA") settlement pursuant to the Parties' Settlement Agreement, appointing Plaintiff as Class Representatives for settlement purposes only; (2) appointing Jonathan M. Lebe and Annaliz Loera of Lebe Law, APLC as Class Counsel for settlement purposes only; (3) preliminarily certifying the proposed class for settlement purposes only; (4) appointing CPT Group, Inc. as the third party settlement administrator; (5) approving the proposed form notice of the class action settlement and the PAGA settlement; (6) approving the schedule for dissemination of notice to class members; and (7) scheduling a final fairness hearing.

This motion is based on this notice and motion, the attached memorandum of points and authorities, Plaintiff's report re: compliance with court guidelines, the declarations of Jonathan M. Lebe and Plaintiff, all documents on file in this action, and upon such oral argument as may be presented at the time of hearing.

Dated: July 14, 2021

Lebe Law, APLC

By:



Jonathan M. Lebe

Attorney for Plaintiff Melinda James, individually and on behalf of all similarly situated

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Melinda James (“Plaintiff”), as representative of the putative settlement class,
4 requests preliminary approval of a class action settlement to resolve this action in its entirety. The
5 crux of Plaintiff’s claims in this case is that Defendant Coolsys Commercial & Industrial Solutions,
6 Inc. (“Defendant”), formerly known as Source Refrigeration & HVAC, Inc., violated California
7 wage and hour laws by failing to provide legally-compliant meal and rest breaks, failing to pay for
8 all time worked due to unlawful time rounding and manipulation, failing to pay all reporting time
9 pay, and failing to pay all final wages. The Parties have entered into a Settlement Agreement
10 which, subject to approval by this Court, fully releases Defendant from all class and Private
11 Attorney General Act (“PAGA”) claims in this action in exchange for lump sum payment of
12 \$527,500.

13 The Settlement Agreement was reached through arm’s-length negotiations by informed
14 counsel following extensive investigation of the asserted claims and relevant law, the exchange of
15 informal discovery, and a mediation with Gig Kyriacou on January 26, 2021. The settlement
16 provides significant benefits to members of the settlement class, which will be distributed to the
17 class, less Plaintiff’s counsels’ fees and costs, settlement administration costs, payment to the
18 Labor Workforce and Development Agency, and a small enhancement to Plaintiff for her services.
19 Once appropriate deductions have been made from the gross settlement fund, class members will
20 recover an average of approximately **\$696.10 per class member**. Plaintiff respectfully requests
21 that the Court preliminarily approve this settlement because it reflects a fair and reasonable
22 compromise of the disputed claims in this action.

23 To effectuate the settlement, the Plaintiff respectfully requests that the Court: (1) grant
24 preliminary approval of the settlement in accordance with the Parties’ Settlement Agreement; (2)
25 certify the proposed settlement class for settlement purposes only; (3) appoint Jonathan M. Lebe
26 and Annaliz Loera of Lebe Law, APLC as class counsel for settlement purposes; (4) appoint
27 Plaintiff as a class representative for settlement purposes; (5) approve the proposed class and
28 PAGA notice, which is attached as Exhibit A to the Settlement Agreement, which is Exhibit 1,

both of which are attached to the Declaration of Jonathan M. Lebe (“Lebe Decl.”); (6) appoint CPT Group, Inc. as the third party administrator for the settlement; and (7) schedule a fairness hearing for final approval of the settlement.

Plaintiff submits that the proposed settlement is in compliance with the Court’s procedural guidelines for class action and PAGA settlements, as specifically detailed in Plaintiff’s Report Re: with Procedural Guidelines for Preliminary Approval of Class Action and PAGA Settlements filed concurrently with this Motion. Accordingly, Plaintiff respectfully requests that the Court grant this motion.

II. FACTUAL BACKGROUND

A. Plaintiff’s Claims Against Defendant

Defendant is a retail, commercial, and industrial refrigeration and HVAC company and is headquartered in Orange County. Plaintiff worked for Defendant from approximately December 16, 2019, to approximately March 11, 2020, as an Accounts Payable Manager. (Declaration of Melinda James, ¶ 2.)

In this case, Plaintiff has asserted claims for: (1) Violations of Labor Code §§ 1194, 1197.1 and the Applicable Wage Order for Failure to Pay All Minimum Wages; (2) Violations of Labor Code §§ 510, 1194, 1198 and the Applicable Wage Order for Failure to Pay All Overtime Wages; (3) Violations of Labor Code §§ 204, 210 and the Applicable Wage Order for Failure to Pay All Wages; (4) Violations of the Applicable Wage Order for Failure to Pay Reporting Time Pay; (5) Violations of Labor Code §§ 226.7, 512 and the Applicable Wage Order for Failure to Provide Timely and Compliant Meal Periods; (6) Violations of Labor Code §§ 226.7 and the Applicable Wage Order for Failure to Provide Timely and Compliant Rest Periods; (7) Violations of Labor Code §§ 226(a), 226.3 and the Applicable Wage Order for Failure to Provide Accurate and Itemized Wage Statements; (8) Violations of Labor Code §§ 201-203 for Failure to Timely Pay All Wages Due to Terminated/Separated Employees; (9) violation of Business and Professions Code §§ 17200, *et seq.*; and (10) Violation Of Private Attorney General Act (Cal. Lab. Code § 2698, *Et. Seq.*). (Lebe Decl., ¶ 10.)

1 Plaintiff originally brought this action as a PAGA representative due to a purported
2 arbitration agreement but agreed to amend her complaint to assert class action claims for settlement
3 purposes. (Id.) Plaintiff brings this putative class action seeking to represent a class of all non-
4 exempt current and former employees of Defendant in the State of California within the applicable
5 statute of limitations regarding the above causes of action. (Id.) In advance of the hearing date
6 for this motion, Plaintiff will be filing a joint stipulation for the filing of an amended complaint to
7 assert wage and hour violations on behalf of the proposed class (expanding the case from a PAGA-
8 only case to a hybrid class and PAGA action). (Lebe Decl., ¶ 13.)

9 **B. Procedural History**

10 On October 1, 2020, Plaintiff filed a representative PAGA complaint in Orange County
11 Superior Court. (Lebe Decl., ¶ 9.) Following this, on November 5, 2020, Defendant filed an
12 answer, asserting various affirmative defenses. (Lebe Decl., ¶ 11.)

13 On January 26, 2021, the parties mediated with Gig Kyriacou, a very experienced mediator
14 of wage and hour class actions. (Lebe Decl., ¶ 12.) In advance of the mediation, the parties
15 engaged in informal discovery, whereby Defendant provided the following information related to
16 Defendant's employees: (1) the number of aggrieved employees; (2) the number of former
17 employees (3) workweeks worked; (4) the number of pay periods; (5) company handbook and
18 policies pertaining to wage and hour issues; and (6) a sample of time and payroll records. (Id.)

19 **C. The Settlement**

20 **1. Settlement Negotiations**

21 At the mediation, on January 26, 2021, the Parties engaged in settlement negotiations,
22 including the exchange of legal analysis and data pertaining to the claims. (Lebe Decl., ¶ 15.)
23 Negotiations were rigorous and conducted at arms' length. (Id.) The Parties did not settle at
24 mediation but continued their settlement negotiations with the assistance of the mediator. (Id.)
25 Thereafter, on February 5, 2021, the Parties agreed to settle the case in response to a mediator's
26 proposal. (Id.) The Parties agreed to settle on a class wide and PAGA basis. (Id.)

27 In June of 2020, after months of negotiations regarding the details of the written settlement
28 agreement, the Parties agreed to a long-form settlement agreement to settle all alleged class claims

1 and Plaintiff's individual claims. (Id.) Defendant adamantly denies any wrongdoing and believe
2 that they have meritorious defenses to the class issue and on the merits but have concluded that
3 the further defense of this action would be lengthy and expensive for all parties. (Id.) Plaintiff
4 and her counsel have considered the uncertainty and risk involved in further litigation, including
5 the difficulties and potential delays in seeking class certification and the financial health of
6 Defendant. (Id.) Based upon these considerations, Plaintiff and proposed class counsel have
7 determined that the settlement is fair, adequate, and reasonable, and is in the best interests of the
8 class. (Id.)

9 **2. Settlement Terms**

10 The settlement was reached on a class basis. The settlement class includes Plaintiff and
11 non-exempt employees of Defendant in California who, based on Defendant's records, were
12 employed during the class period between October 1, 2016, through April 1, 2021. (Lebe Decl., ¶
13 16; Exhibit A.)

14 In exchange for a release of claims, Defendant is providing substantial compensation to
15 Plaintiff and the settlement class. Defendant has agreed to pay an amount of \$527,500 to settle
16 the class and PAGA claims, of which \$25,000 is reserved to settle the PAGA claims. (Id.) The
17 settlement includes the following: (1) Plaintiff's attorneys' fees up to \$175,833.33; (2) Plaintiff's
18 counsels' reasonable litigation costs necessary to prosecute and settle this litigation and administer
19 the Agreement, estimated at no more than \$15,000; (3) a \$5,000 enhancement award to Plaintiff;
20 (4) settlement administration costs not to exceed \$15,000; (5) and a payment of \$18,750 to the
21 LWDA, which represents 75% of the PAGA settlement amount. (Id.) After deduction of these
22 amounts, the remaining net settlement fund of \$297,916.67, which includes \$6,250 reserved for
23 the PAGA aggrieved employees, and will be distributed to class members and PAGA aggrieved
24 employees based on the number of workweeks employed with Defendant. (Id.) Class members
25 will not be required to return any claims form. (Id.)

26 Defendant has also agreed to pay an amount of \$20,000, to settle Plaintiff's separate
27 individual claims regarding retaliation, wrongful termination, and other related claims that she had
28 planned to bring in a separate individual lawsuit. In exchange for this settlement, Plaintiff has

1 agreed to a general release of all claims, which is broader than the release given by the class. (Lebe
2 Decl., ¶ 16; Exhibit 1.) Plaintiff’s counsel is waiving attorney’s fees/costs for this individual
3 settlement. (Id.)

4 **3. Notice To Class Members And Right To Opt Out Or/Object To** 5 **Settlement**

6 Following preliminary approval of the settlement, and in accordance with California Rule
7 of Court 3.769(f), the Notice of Class Action Settlement together with a change of address form,
8 and pre-printed return envelope (“Notice Packet”), will be mailed by first-class mail to each
9 settlement class member at the last known address according to Defendant’s records. (Lebe Decl.,
10 ¶ 17.) The proposed Notice of Class Action Settlement (“class notice”) is attached as Exhibit A
11 to the Settlement Agreement. (Id.) The class notice includes information on the claims asserted,
12 the material settlement terms, the right to object, or to opt out and the timing and manner to do
13 either. (Id.) Class members will have 45 days to object or request exclusion from the settlement.
14 The class notice will also inform the class of the date, place and time of the final approval hearing.
15 (Id.)

16 Before mailing the notice packets, the settlement administrator will conduct a search of all
17 class members’ addresses using the National Change of Address database to update addresses.
18 (Id.) Furthermore, the settlement administrator will undertake an Experian Skip Tracing in an
19 effort to locate settlement class members whose Notice Packets are returned as undeliverable. (Id.)

20 **III. LEGAL ARGUMENT**

21 **A. Standard For Preliminary Settlement Approval**

22 To prevent fraud, collusion, or unfairness to the class, settlement of a class action requires
23 court approval. (Dunk v. Ford Motor Co. (1996) 48 Cal. App. 4th 1794, 1800-01, as modified
24 (Sept. 30, 1996) (citations omitted); Cal. Rules of Court 3.769(c), 3.770(a).) When “the court
25 grants preliminary approval, it must set a final approval hearing, and provide for notice . . . to the
26 class.” (Luckey v. Superior Court (Oct. 29, 2014) 228 Cal. App. 4th 81, 93, *review denied*; see
27 Cal. Rule of Court 3.769(e).)

1 The preliminary approval stage “is not a fairness hearing.” (Armstrong v. Bd. of Sch.
2 Directors of City of Milwaukee (7th Cir. 1980) 616 F.2d 305, 314 (*overruled on other grounds*
3 Felzen v. Andreas (7th Cir. 1998) 134 F.3d 873). At the preliminary approval stage, the court
4 “limits its inquiry to the extent necessary to reach a reasoned judgment that the agreement is not
5 the product of fraud or overreaching by, or collusion between, the negotiating parties.” (In re
6 Microsoft I-V Cases (2006) 135 Cal. App. 4th 706, 723, (internal citations omitted); 7-Eleven
7 Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal. App. 4th 1135, 1145.)

8 A class action settlement is presumed to be fair where: “(1) the settlement is reached
9 through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel
10 and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
11 percentage of objectors is small.” (Chavez, 162 Cal. App. 4th at 52 [citing Dunk, 48 Cal. App. 4th
12 at 1802]; In re Microsoft I-V Cases, 135 Cal. App. 4th at 723; 7-Eleven Owners for Fair
13 Franchising, 85 Cal. App. 4th at 1146.) Where there is no extrinsic evidence of fraud or collusion,
14 the court should assume that negotiations were conducted in good faith. (Newberg on Class
15 Actions § 11.51 (3d ed. 1992); Cho v. Seagate Tech. Holdings, Inc. (2009) 177 Cal. App. 4th 734,
16 748, (denying objector’s request for discovery where there was no evidence of collusion between
17 the parties during negotiations); In re Cellphone Termination Fee Cases (2009) 180 Cal. App. 4th
18 1110, 1122-23 [citing Cho, 177 Cal. App. 4th at 748].) Here, when measured against the above
19 standards, the settlement satisfies the requirements for preliminary approval, because it is well
20 within the range of possible approval, reached after extensive litigation in which both parties have
21 thoroughly evaluated the claims, and there are no grounds to doubt its fairness.

22 **B. The Proposed Settlement Satisfies The Standards For Preliminary Approval**

23 In Kullar v Foot Locker Retail, Inc. (2008) 168 Cal. App. 4th 116, the California Appellate
24 Court held that a presumption of fairness exists when:

- 25 • The settlement is reached through arm's-length bargaining;
- 26 • Investigation and discovery are sufficient to allow counsel and the court to act
- 27 intelligently;
- 28

- Counsel is experienced in similar litigation; and
- The percentage of objectors is small.

The Court also confirmed that the trial court should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm's-length transaction entered without self-dealing or other potential misconduct. (168 Cal. App. 4th at 129.) Here, all four Kullar elements are met.

1. The Settlement Is the Result of Arm's Length Bargaining

The parties engaged in settlement negotiations at the mediation after months of analysis and informal discovery. (Lebe Decl., ¶ 15.) Counsel aggressively pursued their respective positions before eventually reaching an agreement. (Id.) Each side provided the other with several detailed settlement proposals before the agreement was reached. (Id.) The negotiations were rigorous and conducted at arm's length. (Id.) The settlement cannot be described as fraudulent or collusive. (Id.) Rather, the settlement is the product of informed and rigorous negotiations by experienced counsel. (Id.) The settlement is fair, adequate, and reasonable for Plaintiff and the class. (Id.)

2. There Has Been Sufficient Investigation and Discovery to Allow Plaintiff and the Court to Act Intelligently and Evaluate the Settlement

Prior to reaching agreement to settle the class claims, the parties engaged in substantial informal discovery. In advance of the mediation, the parties engaged in informal discovery, whereby Defendants provided the following information related to all aggrieved employees: (1) the number of aggrieved employees; (2) the number of former employees (3) workweeks worked; (4) the number of pay periods; (5) company handbook and policies pertaining to wage and hour; and (6) a sampling of time and payroll records. (Lebe Decl., ¶ 12.) During the mediation, the Parties discussed a broader resolution to settle on a class wide basis instead of PAGA only. (Id.) Defendant provided the number of class members and number of workweeks during the class period to allow Plaintiff to evaluate damages on class wide basis. (Id.) Counsel for Plaintiff did an extensive analysis of the wage and hour claims presented by this class action, including a

1 detailed exposure analysis brought to the mediation, upon which settlement negotiations were
2 based at the mediation. (*Id.*) The investigation permitted counsel for Plaintiff to do a rigorous
3 damages analysis and come up with Defendant's total exposure presented by this case, which is
4 detailed below.

5 **3. Plaintiff and Their Counsel Support the Proposed Settlement and**
6 **Counsel Are Experienced in Similar Litigation**

7 Plaintiff and their counsel fully support the settlement. (Lebe Decl., ¶ 8; Declaration of
8 Melinda James, ¶ 12.) Plaintiff's counsel have considerable experience prosecuting class wage
9 and hour litigation, having been approved as class counsel and co-class counsel in numerous class
10 actions. (Lebe Decl., ¶¶ 3-8.)

11 Plaintiff's counsel are prepared to litigate Plaintiff's claims through trial and any resulting
12 appellate proceeding. (Lebe Decl., ¶ 8.) However, because of the interest in avoiding the risks
13 and expenses associated with this litigation, and the substantial benefits the settlement confers
14 upon settlement class members and the named Plaintiff, Plaintiff and her counsel have determined
15 that the settlement is in the best interests of Plaintiff and the class. (*Id.*)

16 **4. There Is No Known Opposition to the Settlement**

17 To date, Plaintiff is unaware of any opposition to the settlement. (Lebe Decl., ¶ 19.) To
18 the extent there are objectors following the mailing of the Notice Packet, Class Members will have
19 the opportunity to file objections to or opt-out of the settlement. (*Id.*)

20 **5. The Proposed Settlement Is Fair and Reasonable Given the Substantial**
21 **Benefits to Class Members and the Risks and Expense of Complex and**
22 **Protracted Litigation**

23 The settlement confers substantial benefits on settlement class members. In particular,
24 Defendants have agreed to a lump sum payment of \$527,500, which will be distributed to the class,
25 less Plaintiff's counsel's fees and costs, settlement administration costs, payment to the LWDA,
26 and a small enhancement to Plaintiff for her services. Once appropriate deductions have been
27 made from the gross settlement fund, the estimated 419 class members will recover an average of
28 approximately \$696.10 per class member. Additionally, the LWDA and aggrieved employees will

1 receive \$25,000 for PAGA penalties. Plaintiff respectfully requests that the Court preliminarily
2 approve this settlement because it reflects a fair and reasonable compromise of the disputed claims
3 in this action.

4 This concrete and substantial benefit compares favorably to the uncertainty associated with
5 continued litigation over contested issues. (See Munoz v. BCI Coca-Cola Bottling Co. of L.A.
6 (2010) 186 Cal. App. 4th 399, 410-11.) Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal. App.
7 4th 116, requires information be presented to the Court, acting as a fiduciary for the absent class
8 members "... to ensure that the recovery represents a reasonable compromise, given the magnitude
9 and apparent merit of the claims being released, discounted by the risks and expenses of attempting
10 to establish and collect on those claims by pursuing the litigation..." (Kullar, 168 Cal. App.4th at
11 129.)

12 Here, Plaintiff's Counsel calculated Defendant's total potential exposure assuming
13 Plaintiff prevailed on all aspects of her claims at trial but weighed that value against the chance of
14 succeeding at class certification and trial. Moreover, Plaintiff's calculated Defendant's total
15 potential exposure assuming there were 419 total class members, including 240 class members in
16 the wage statement subclass, 198 former employees in the waiting time penalties subclass and
17 52,546 work weeks.

18 In order to calculate this exposure, prior to mediation, Plaintiff received informal discovery
19 from Defendant crucial information for calculating damages in this case including: the number of
20 aggrieved employees, the number of workweeks for aggrieved employees during the PAGA
21 period, the number of former employees, the number of pay periods during the PAGA period and
22 a sampling of time and payroll records. (Lebe Decl., ¶ 12.) Defendant also produced the company
23 handbook and employment policies pertaining to wage and hour. (Id.) During the mediation,
24 Defendant also provided Plaintiff the number of class members and number of workweeks during
25 the class period for Plaintiff to calculate the exposure for a class wide settlement. (Id.)

26 Failure to Pay Minimum Wage and Overtime Due to Rounding: Plaintiff's claims for
27 failure to pay minimum wages and overtime due to rounding are premised on the theory that
28 Defendant failed to pay class members all minimum wages and overtime owed due to Defendant's

1 alleged practice of unlawful rounding and time manipulation. (Lebe Decl., ¶ 14.) Plaintiff and
2 her expert calculated Defendant's exposure as to this causes of action based on the applicable labor
3 code statute, Labor Code Section 1194(a) which provides that: "Notwithstanding any agreement
4 to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
5 overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid
6 balance of the full amount of this minimum wage or overtime compensation. . . ." (Id.)

7 By using the information provided by Defendant in advance of and during the mediation
8 and the records of class members, Plaintiff and her expert were able to calculate the exposure of
9 Defendant for this causes of action. (Id.) Specifically, by multiplying the total number of
10 workweeks, the number of full-time equivalent employees and the weighted minimum wage
11 applicable during the class period by an estimated 5 minutes of shaved time, Plaintiff and her
12 expert estimated that Defendant's maximum exposure for this claim was **\$195,059** and with
13 interest could have reached approximately **\$214,780**. (Id.)

14 Failure to Pay Overtime Wage Due to Regular Rate of Pay Issues: Plaintiff also has
15 overtime claim for failure to pay overtime wages premised on the theory that Defendant failed to
16 pay class members all overtime wages at the regular rate of pay. (Id.) Specifically, Plaintiff argued
17 at mediation that Defendant failed to include the following types of pay into the regular rate of
18 pay: "Annual Bonus," "Bonus," "Sign On Bonus," "Emp Referral," and "Qtr Incentive." Plaintiff
19 and her expert calculated Defendant's exposure as to this cause of action based on the applicable
20 labor code statute, Labor Code Section 510 which provides that: "Eight hours of labor constitutes
21 a day's work. Any work in excess of eight hours in one workday and any work in excess of 40
22 hours in any one workweek and the first eight hours worked on the seventh day of work in any one
23 workweek shall be compensated at the rate of no less than one and one-half times the regular rate
24 of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the
25 rate of no less than twice the regular rate of pay for an employee." (Id.)

26 By using the information provided by Defendant in advance of and during the mediation
27 and the records of class members, Plaintiff and her expert were able to calculate the exposure of
28 Defendant for this cause of action. (Id.) Specifically, by including all "Annual Bonus," "Bonus,"

1 “Sign On Bonus,” “Emp Referral,” and “Qtr Incentive” compensation into the numerator for
2 regular rate of pay calculations on a weighted average basis, Plaintiff and her expert estimated that
3 Defendant’s maximum exposure for this claim was **\$46,409** and with interest could have reached
4 approximately **\$49,031**. (Id.)

5 Failure to Pay Reporting Time Pay: Plaintiff’s claim for failure to pay reporting time pay
6 is premised on the theory that Defendant failed to pay class members for half of their shift when
7 they were required to report to work but were sent home early. (Id.) Plaintiff and her expert
8 calculated Defendant’s exposure as to this cause of action based on the applicable wage order,
9 which provides that: “Each workday an employee is required to report for work and does report,
10 but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work,
11 the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than
12 two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not
13 be less than minimum wage. (Id.)

14 By using the information provided by Defendant in advance of and during the mediation
15 and the records of class members, Plaintiff and her expert were able to calculate the exposure of
16 Defendant for this cause of action. (Id.) Specifically, isolating all shifts in which class members
17 worked less than 4 hours and increasing the pay for those shifts to 4 hours, Plaintiff and her expert
18 estimated that Defendant’s maximum exposure for this claim was **\$743,635** and with interest could
19 have reached approximately **\$815,642**. (Id.)

20 Failure to Provide Timely and Compliant Meal Periods: Plaintiff’s claim for failure to
21 provide timely and compliant meal periods is premised on the theory that Defendant failed to
22 provide meal periods for each five hours worked, Plaintiff and class members often worked
23 through meal periods, and purported meal periods were often short, late or interrupted. (Id.)
24 Plaintiff and her expert calculated Defendant’s exposure as to this cause of action based on the
25 applicable labor code statute, Labor Code Section 226.7(c), which provide that: “If an Employers
26 fails to provide an employee a meal or rest or recovery period in accordance with a state law,
27 including but not limited to, an applicable statute or applicable regulation, standard, or order of the
28 Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the

1 Division of Occupational Safety and Health, the Employers shall pay the employee one additional
2 hour of pay at the employee's regular rate of compensation for each workday that the meal or rest
3 or recovery period is not provided." (Id.)

4 By using the information provided by Defendant in advance of and during the mediation
5 and the records of class members, Plaintiff and her expert able to calculate the exposure of
6 Defendant for this cause of action. (Id.) Specifically, by multiplying the number of unique meal
7 break violations from the time records produced by the average hourly rate paid and subtracting
8 all premiums already paid by Defendant, Plaintiff and her expert estimated that Defendant's
9 maximum exposure for this claim was **\$2,448,492** and with interest could have reached
10 approximately **\$2,617,917**. (Id.)

11 Failure to Provide Timely and Compliant Rest Breaks: Plaintiff's claim for failure to
12 provide timely and compliant rest breaks is premised on the theory that Defendant failed to
13 authorize or permit ten-minute rest breaks for every four hours or major fraction thereof worked.
14 (Id.) Plaintiff and her expert calculated Defendant's exposure as to this cause of action based on
15 the applicable labor code statute, Labor Code Section 226.7(c), which provide that: "If an
16 Employers fails to provide an employee a meal or rest or recovery period in accordance with a
17 state law, including but not limited to, an applicable statute or applicable regulation, standard, or
18 order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board,
19 or the Division of Occupational Safety and Health, the Employers shall pay the employee one
20 additional hour of pay at the employee's regular rate of compensation for each workday that the
21 meal or rest or recovery period is not provided." (Id.)

22 By using the information provided by Defendant in advance of and during the mediation
23 and the records of class members, Plaintiff and her expert were able to calculate the exposure of
24 Defendant for this cause of action. (Id.) Specifically, by multiplying the total number of
25 workweeks, the number of full-time equivalent employees and the average hourly rate applicable
26 during the class period, and assuming a 50 percent violation rate, Plaintiff and her expert estimated
27 that Defendant's maximum exposure was **\$862,237** and with interest could have reached
28 approximately **\$923,365**. (Id.)

1 Failure to Provide Accurate and Itemized Wage Statements: Plaintiff's claim for failure to
2 provide accurate and itemized wage statements is premised on the theory that Defendant failed to
3 include all required information pursuant to Labor Code Section 226, including but not limited to,
4 failing to include the correct number of hours worked and wages earned. (Id.) Plaintiff and her
5 expert calculated Defendant's exposure as to this cause of action based on the applicable labor
6 code statute, Labor Code Section 226.3, which provide that: "Any employer who violates
7 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty
8 dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000)
9 per employee for each violation in a subsequent citation, for which the employer fails to provide
10 the employee a wage deduction statement or fails to keep the records required in subdivision (a)
11 of Section 226. The civil penalties provided for in this section are in addition to any other penalty
12 provided by law..." (Id.)

13 By using the information provided by Defendant in advance of and during the mediation
14 and the records of class members, Plaintiff and her expert were able to calculate the exposure of
15 Defendant for this cause of action. (Id.) Specifically, by multiplying the total number of
16 workweeks, the 240 class members in the wage statement subclass number of full-time equivalent
17 employees and the civil penalty pursuant to Labor Code Section 226.3, Plaintiff and her expert
18 estimated that Defendant's maximum exposure for this claim was **\$960,000**. (Id.)

19 Failure to Timely Pay All Wages due to Terminated/Separated Employees: Plaintiff's
20 claim for failure to timely pay all wages due to terminated/separated employees is premised on
21 Plaintiff being paid her final wages two days after she was terminated. (Id.) Plaintiff and her
22 expert calculated Defendant's exposure as to this cause of action based on the applicable labor
23 code statute, Labor Code Section 203, which provide that: "If an employer willfully fails to pay,
24 without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and
25 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall
26 continue as a penalty from the due date thereof at the same rate until paid or until an action therefor
27 is commenced; but the wages shall not continue for more than 30 days. An employee who secretes
28 or absents themselves or themselves to avoid payment to him or her, or who refuses to receive the

1 payment when fully tendered to him or her, including any penalty then accrued under this section,
2 is not entitled to any benefit under this section for the time during which he or she so avoids
3 payment.” (Id.)

4 By using the information provided by Defendant in advance of and during the mediation
5 and the records of class members, Plaintiff and her expert were able to calculate the exposure of
6 Defendant for this cause of action. (Id.) Specifically, by multiplying the total number of separated
7 employees by their average monthly wages, Plaintiff and her expert estimated that Defendant’s
8 maximum exposure for this claim was **\$1,261,076**. (Id.)

9 Summary of Exposure Analysis: Plaintiff estimated that Defendant’s maximum potential
10 exposure on class claims excluding PAGA penalties and interest could have reached **\$6,516,908**
11 if Plaintiff had successfully certified each claim, overcame Defendant’s arguments that the classes
12 should not be certified due to individualized issues, and prevailed at trial. (Id.) While the amount
13 of the class members’ maximum potential damages – if proven – is substantial, the legitimate and
14 serious risks above compelled a considerable discount for settlement. (Id.) The risks associated
15 with proceeding to trial are meaningful. (Id.) Indeed, the issue of class certification had not yet
16 been presented to the Court. (Id.) Defendant argues that there was no unlawful time rounding,
17 and if there was, individual issues predominate as to what extent rounding affecting class
18 members’ hours worked. (Id.) Defendants also argues that none of their wage and hour policies
19 are facially invalid, and that Defendant appropriately paid its employees at all times and was
20 compliant with all applicable wage-and-hour laws. (Id.) If successful at defeating a class
21 certification motion, the class would recover nothing as a result of this litigation. (Id.) Class
22 certification is a major hurdle for Plaintiff and the Class. (See Munoz, 186 Cal. App. 4th at 411
23 [uncertainty of class treatment was significant question which supported the decision to settle].)
24 Class certification briefing would be lengthy and expensive and both sides risked an unfavorable
25 ruling. (Id.) Moreover, Courts have the discretion to reduce PAGA penalties. Based on the
26 significant benefits to the class and equally significant potential risks to proceeding to trial,
27 Plaintiff believe the settlement is in the best interest of the class. (Lebe Decl., ¶ 8.)

1 **C. The Court Should Certify A Settlement Class**

2 California courts may certify a “settlement class” for settlement purposes only. (See
3 Wershba, 91 Cal. App. 4th at 237-38; Dunk, 48 Cal. App. 4th at 1807.) Where a court evaluates
4 class certification in the context of settlement, the evaluation may differ from the litigation context.
5 (Luckey, 228 Cal. App. 4th at 93.) For example, protecting absent class members “by blocking
6 unwarranted or overbroad class definitions require[s] heightened scrutiny in the settlement-only
7 class context” since the court will lack the opportunity to adjust the class based on information
8 ascertained through litigation. (Id. at 94.) “The court is, in short, acting in a fiduciary capacity as
9 guardian of the rights” of absent class members. (Id. at 103.)

10 Before granting class certification in the settlement context, the court must find that the
11 proposed class satisfies the requirements of California Code of Civil Procedure § 382. (See
12 Wershba, 91 Cal. App. 4th at 237.) The parties must show the existence of “an ascertainable class
13 and a well-defined community of interest among class members.” (Sav-on Drug Stores, Inc. v.
14 Superior Court (2004) 34 Cal. 4th 319, 326.) Here, both elements are present.

15 **1. The Proposed Settlement Class Is Ascertainable**

16 “Whether a class is ascertainable is determined by examining (1) the class definition, (2)
17 the size of the class, and (3) the means available for identifying class members.” (Global Minerals
18 & Metals Corp. v. Superior Court (2003) 113 Cal. App. 4th 836, 849.) Here, the proposed class
19 consists of all individuals employed by Defendant as non-exempt hourly employees within the
20 State of California during the class period. This class definition provides “common characteristics
21 sufficient to allow a member of that group to identify himself or herself as having a right to recover
22 based on the description.” (Aguirre v. Amscan Holdings, Inc. (2015) 234 Cal. App. 4th 1290,
23 1300, *reh’g denied, review denied* (June 17, 2015); Bartold v. Glendale Fed. Bank (2000) 81 Cal.
24 App. 4th 816, 828, , *overturned due to legislative action on other grounds*.)

25 The class includes approximately 419 individuals, which is sufficient to meet the
26 numerosity requirement of section 382. (See Rose v. City of Hayward (1981) 126 Cal. App. 3d
27 926, 934.) And, class members can easily be identified, since Defendant maintains for each class
28 member their last known address and social security number.

1 **2. The Proposed Settlement Class Comprises a Community of Interest**

2 The proposed settlement class comprises a sufficient community of interest. A community
3 of interest exists where (i) legal or factual questions common to the class predominate over
4 questions affecting individual class members; (ii) claims of the class representatives are typical of
5 the claims or defenses of the class; and (iii) the class representatives are able to protect adequately
6 and fairly the interests of the class. (See Sav-on, 34 Cal. 4th at 326; Wershba, 91 Cal. App. 4th at
7 238.)

8 Here, the proposed settlement class satisfies the above three factors. For settlement
9 purposes, the class members share questions of law or fact that are substantially similar. (Wershba,
10 91 Cal. App. 4th at 238.) Plaintiff alleges that Class Members were not paid all wages, including
11 minimum and overtime wages. These wage and hour violations were suffered on a class wide
12 basis as a result of Defendant's unlawful rounding and time manipulation which led to Defendant's
13 failure to pay for all hours worked. Plaintiff also alleges that Class Members were not provided
14 timely and compliant meal and rest breaks. These wage and hour violations were suffered on a
15 class wide basis as a result of Defendant failure to provide second meal periods during shifts lasting
16 between ten (10) and twelve (12) hours. The wage and hour violations were therefore consistent
17 throughout the class. For these same reasons, Plaintiff's claims are typical of the claims of
18 settlement class members, as the Plaintiff and all settlement class members worked for Defendant
19 in California and suffered the same violations.

20 Third, Plaintiff can adequately protect the interests of the settlement class. (See Wershba,
21 91 Cal. App. 4th at 238.) This factor considers whether Plaintiff's attorneys are qualified to
22 conduct the litigation and the plaintiff's interests are not antagonistic to the interests of the class.
23 (McGhee v. Bank of Am. (1976) 60 Cal. App. 3d 442, 450.) Here, Plaintiff's counsel have no
24 conflicts of interest, have vigorously prosecuted this action on behalf of Plaintiff and the settlement
25 class, and have significant experience litigating class actions, including those involving similar
26 claims. Further, no conflict exists between the named Plaintiff and the class. The Plaintiff and
27 settlement class members have co-extensive claims and the terms of the class settlement apply to
28 all class members equally. There is no potential for conflicts in allocating the settlement fund

1 since funds will be distributed on a *pro rata* basis to settlement class members based on the amount
2 of work weeks worked by each class member and their rate of pay. In short, the Court should
3 certify the class for settlement purposes only.

4 **D. The Court Should Approve The Proposed Notice**

5 Rule of Court 3.769(f) requires notice of the final approval hearing to be provided to class
6 members in the manner specified by the court. “The notice must contain an explanation of the
7 proposed settlement and procedures for class members to follow in filing written objections to it
8 and in arranging to appear at the settlement hearing and state any objections to the proposed
9 settlement.” (See Litwin v. iRenew Bio Energy Solutions, LLC (2014) 226 Cal. App. 4th 877,
10 883.) Notice should provide each class member sufficient information to decide whether to accept
11 the benefit he would receive under the settlement, or to opt out and pursue his own claim. (Chavez
12 v. Netflix, Inc. (2008) 162 Cal. App. 4th 43, 56.)

13 The proposed notice meets this standard; it reasonably informs all class members of the
14 nature and status of the litigation and the important terms of the settlement. In particular, the notice
15 provides each class member with an estimate of the value of their share of the settlement, explains
16 their right to object to the settlement at the fairness hearing, and informs class members of their
17 right to opt out of the settlement. In short, the notice provides settlement class members with
18 ample information to allow an informed decision about their participation in the settlement.

19 The proposed manner of notice and timetable for further proceedings are also reasonable.
20 Under the proposed schedule, notice will be sent via first-class U.S. mail to all class members
21 thirty (35) days after the Court preliminarily approves the settlement. Class members will then
22 have forty-five (45) days from the mailing date of notice to file a written request to be excluded
23 from the settlement. This is sufficient time. (See Torrison v. Tucson Elec. Power Co. (9th Cir. 1993)
24 8 F.3d 1370, 1375 [31 day period for written objections]; Williams v. Costco Wholesale Corp.
25 (S.D. Cal. July 7, 2010), 2010 U.S. Dist. LEXIS 67731 at *4-5 [30-day opt-out period].) Following
26 the end of this time period, Plaintiff will file a motion for final approval of the settlement. The
27 parties will take all needed actions to secure final approval of the settlement.

1 **IV. CONCLUSION**

2 For the foregoing reasons, the parties respectfully request that the Court grant preliminary
3 approval of the proposed settlement and enter the proposed Order Granting Preliminary Approval,
4 authorize mailing of the class notice, and set a date for a final approval hearing.
5

6 Dated: July 14, 2021

Lebe Law, APLC

7
8 By:



9 Jonathan M. Lebe

10 Attorney for Plaintiff Melinda James, individually and on
11 behalf of all similarly situated
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