

Jonathan M. Lebe (State Bar No. 284605)
Jon@lebelaw.com
Annaliz Loera (State Bar No. 334129)
Annaliz@lebelaw.com
Lebe Law, APLC
777 S. Alameda Street, Second Floor
Los Angeles, CA 90021
Telephone: (213) 444-1973

Attorneys for Plaintiff Melinda James,
individually and on behalf of all others 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

MOTION FOR FINAL APPROVAL

**PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

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

Hearing Information:

Date: March 24, 2022

Time: 2:00 p.m.

Location: CX-102

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 24, 2022 at 2:00 p.m., in Department CX-102 of the above-entitled Court, located at 751 West 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 to:

1. Finally adjudicate the Settlement as fair, reasonable, and adequate;
2. Direct distribution of Settlement benefits by the Settlement Administrator to participating Settlement Class Members in accordance with the Settlement Agreement;
3. Approve and direct the payment by the Settlement Administrator of \$18,750 for Private Attorneys General Act penalties to the California Labor and Workforce Development Agency (the "LWDA") as its share of the Settlement for civil penalties;
4. Approve and direct payment to Class Counsel for their attorneys' fees in the sum of \$175,833.33 for attorney fees and reimbursement of their litigation costs in the sum of \$11,575.34.
5. Approve and direct the payment of the Class Representative enhancement award to the Plaintiff and Class Representative Melinda James in the sum of \$5,000.
6. Approve and direct the payment to the Settlement Administrator, in the sum of \$13,500 for its fees and costs in administering the Settlement; and
7. Direct the Clerk of the Court to enter final judgment; and without affecting the finality of the final judgment, to reserve the Court's continuing jurisdiction over the Parties for the purposes of implementing, enforcing, or administering the Settlement.

This motion is made on the grounds that the proposed Settlement, which was preliminarily approved by this Court on December 21, 2021, is the product of arm's-length, good-faith negotiations, is fair and reasonable to the Class and should now be finally approved, as more fully discussed in the accompanying Memorandum in Support of Final Approval of Class Action Settlement and Entering Final Judgment.

This motion is based on this notice of motion, the accompanying Memorandum of Points and Authorities in support, Declaration of Class Counsel Jonathan M. Lebe, Declaration of

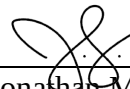
1 Melinda James, and the [Proposed] Order and Judgment Granting Final Approval of Class Action
2 Settlement and Entering Judgment filed and served herewith, and the Court's files in this matter,
3 including but not limited to: (1) the Motion for Order Granting Preliminary Approval; (2) the
4 Order Granting Plaintiff's Motion for Preliminary Approval of Class Action Settlement; (3) all
5 matters of which the Court may take notice, and such oral and documentary evidence presented
6 at the hearing on the motion.

7 This motion is based on this notice and motion, the attached memorandum of points and
8 authorities, the declarations of Jonathan M. Lebe and Plaintiff, all documents on file in this action,
9 and upon such oral argument as may be presented at the time of hearing.

10
11 Dated: March 2, 2022

Lebe Law, APLC

12
13 By:



Jonathan M. Lebe
Annaliz Loera

14
15
16 Attorneys for Plaintiff Melinda James, Individually and on
behalf of all others similarly situated
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	FACTUAL BACKGROUND.....	1
A.	Plaintiff’s Claims Against Defendant.....	1
B.	Mediation, the Proposed Settlement, and Notice to the Class	2
1.	Mediation and Subsequent Arm’s-length Negotiations.....	2
2.	Settlement Terms.....	3
3.	Preliminary Approval.....	4
4.	Notice To Class Members and Right to Opt Out Or/Object to Settlement	5
5.	The Class Response to the Notice.....	5
III.	LEGAL ARGUMENT.....	5
A.	The Settlement is Fair, Adequate, and Reasonable	5
B.	Attorneys’ Fees and Litigation Costs are Reasonable	6
1.	The Requested Attorneys’ Fee Is Within the Range of Fees Approved in Comparable Common Fund Cases.....	7
2.	A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee as Class Counsel’s Lodestar Exceeds the Fees Requested	8
3.	Class Counsel’s Hourly Rates are Reasonable	11
C.	The Litigation Expenses Are Reasonable	12
D.	Settlement Administration Expenses are Reasonable	12
E.	The Proposed PAGA Payment is Reasonable	13
F.	The Requested Service Payment Award is Reasonable.....	13
IV.	CONCLUSION	14

TABLE OF AUTHORITIES

Cases

<u>Boeing Co. v. Van Gemert</u> (1980) 444 U.S. 472, 478.....	6
<u>Chavez v. Netflix, Inc.</u> (2008) 162 Cal. App. 4th 43.....	7
<u>Dennis v. Kellogg Co.</u> , 09-CV-1786-L WMC, 2013 WL 6055326, at *7 (S.D. Cal. Nov. 14, 2013)	8
<u>Dunk v. Ford Motor Co.</u> (1996) 48 Cal.App.4th 1794	5, 6, 7
<u>Garcia v. Gordon Trucking, Inc.</u> , No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575	13
<u>Green v. Obledo</u> (1981) 29 Cal.3d 126,.....	6
<u>Hopson v. Hanesbrands Inc.</u> (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900	11, 13
<u>Ketchum v. Moses</u> (2001) 24 Cal.4th 1122	9
<u>Kullar v. Foot Locker Retail, Inc.</u> (2008) 168 Cal.App.4th 116.....	5
<u>Laffitte v. Robert Half International, Inc.</u> (2016) 1 Cal.5th 480, 503.....	7, 9
<u>Lealao v. Beneficial California, Inc.</u> (2000) 82 Cal.App.4th 19.....	7, 11
<u>McKenzie v. Fed. Express Corp.</u> (C.D.Cal. July 2, 2012, No. CV 10-02420 GAF (PLAx)) 2012 U.S.Dist.LEXIS 103666	9
<u>PLCM Group, Inc. v. Drexler</u> (2000) 22 Cal.4th 1084.....	9, 11
<u>Schiller v. David's Bridal, Inc.</u> (E.D.Cal. June 11, 2012, No. 1:10-cv-00616-AWI-SKO) 2012 U.S.Dist.LEXIS 80776	10
<u>Serrano v. Priest</u> (1977) 20 Cal.3d 25, 34;.....	6, 9
<u>Smith v. CRST Van Expedited, Inc.</u> , 10-CV-1116- IEG WMC, 2013 WL 163293, *5 (S.D. Cal. Jan. 14, 2013).....	8
<u>Spann v. J.C. Penney Corp.</u> (C.D.Cal. 2016) 211 F. Supp. 3d 1244	9
<u>Thayer v. Wells Fargo Bank</u> (2001) 92 Cal.App.4th 819, 834.....	9
<u>Vasquez v. Superior Court</u> (1971) 4 Cal.3d 800.....	6
<u>Villacres v. ABM Indus. Inc.</u> , 189 Cal. App. 4th 562	13
<u>Vincent v. Hughes Air West, Inc.</u> (9th Cir. 1977) 557 F.2d 759	6
<u>Vizcaino v. Microsoft Corp.</u> (9th Cir. 2002) 290 F.3d 1043	9, 10
<u>Williams v. Centerplate, Inc.</u> (S.D.Cal. Aug. 26, 2013, No. 11-CV-2159 H-KSC) 2013 U.S.Dist.LEXIS 121307	10

///

Treatises

Newberg On Class Actions § 14.7	9
Reagan W. Silber and Frank E. Goodrich, Common Funds and Common Problems: Fee Objections and Class Counsel’s Response, 17 Rev. Litig. 525, 546 (1998).....	8
T. Willging, L. Hooper and R. Niemic, Empirical Study of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rules, 90 (1996)	8

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Melinda James (“Plaintiff”), as representative of the putative settlement class,
4 respectfully requests final approval of a class action and Private Attorneys General Act (“PAGA”)
5 settlement on behalf of herself, the other class members and aggrieved employees. The crux of
6 Plaintiff’s claims in this case is that she and other class members were not provided legally-
7 compliant meal and rest breaks, were not paid for all time worked due to unlawful time rounding
8 and manipulation, were not paid all reporting time pay and were not paid all final wages.

9 The Parties have entered into a Settlement Agreement which, subject to approval by this
10 Court, fully releases Defendants Coolsys Commercial & Industrial Solutions, Inc. and Source
11 Refrigeration & HVAC, Inc. (“Defendants”) from all class and PAGA claims in this action in
12 exchange for a lump sum payment of \$527,500. At this time, following the mailing of the Court-
13 approved notice to the Class on January 25, 2022, no Class Members have objected to any term
14 of the Settlement or disputed the number of workweeks worked. Moreover, only 3 of the 415
15 Class Members have requested to be excluded from the settlement, meaning 99.28 percent of the
16 settlement class are participating in this settlement. Based on estimated settlement calculations
17 at this time, the average gross payment to each participating Class Member will be \$721.49, and
18 the highest payment will be \$1,339.12.

19 The proposed Settlement that was preliminarily approved by this Court on December 21,
20 2021 resulted from Class Counsel’s aggressive litigation to achieve the best result for the Class.
21 The Settlement has been embraced by the Class and is fair, reasonable, and adequate. Plaintiff
22 respectfully submits that final approval should now be granted.

23 **II. FACTUAL BACKGROUND**

24 **A. Plaintiff’s Claims Against Defendants**

25 Plaintiff worked for Defendants from approximately December 16, 2019 to approximately
26 March 11, 202, as an Accounts Payable Manager. (Declaration of Melinda James [“James Decl.”,
27 ¶ 2.)
28

1 On October 1, 2020, Plaintiff filed a representative action in Orange County Superior
2 Court. (Lebe Decl., ¶ 10.) Plaintiff originally brought this action as a PAGA representative due
3 to a purported arbitration agreement but agreed to amend her complaint to assert class action
4 claims for settlement purposes. (Id.)

5 On July 26, 2021, Plaintiff filed an amended complaint to allege causes of action brought
6 on behalf of the Class. (Lebe Decl., ¶ 11.) The operative complaint asserts the following claims:
7 (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Pay All
8 Earned Wages; (4) Failure to Pay Reporting Time Pay; (5) Failure to Provide Meal Periods; (6)
9 Failure to Permit Rest Breaks; (7) Failure to Provide Accurate Itemized Wage Statements; (8)
10 Failure to Pay All Wages Due Upon Separation of Employment and Within the Required Time;
11 (9) Violation of Business and Professions Cal. Bus. & Prof. Code § 17200, *et seq.*; and (10) PAGA
12 Penalties. (Id.)

13 **B. Mediation, the Proposed Settlement, and Notice to the Class**

14 **1. Mediation and Subsequent Arm's-length Negotiations**

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

22 At the mediation, on January 26, 2021, the Parties engaged in settlement negotiations,
23 including the exchange of legal analysis and data pertaining to the claims. (Lebe Decl., ¶ 12.)
24 During the mediation, the Parties discussed a broader resolution to settle on a class wide basis
25 instead of PAGA only. (Id.) Defendants provided the number of class members and number of
26 workweeks during the class period to allow Plaintiff and her expert to evaluate damages on class
27 wide basis. (Id.) Counsel for Plaintiff did an extensive analysis of the wage and hour claims
28 presented by this class action, including a detailed exposure analysis brought to the mediation,

1 upon which settlement negotiations were based at the mediation. (Id.) Negotiations were rigorous
2 and conducted at arm's-length. (Id.) The Parties did not settle at mediation but continued their
3 settlement negotiations with the assistance of the mediator. (Id.) On February 5, 2021, the Parties
4 agreed to settle the case in response to a mediator's proposal. (Id.)

5 Defendants adamantly deny any wrongdoing and believes that it has meritorious defenses
6 to the class issues and on the merits but has concluded that the further defense of this action would
7 be lengthy and expensive for all parties. (Lebe Decl., ¶ 13.) Plaintiff and her counsel have
8 considered the uncertainty and risk involved in further litigation, including the difficulties and
9 potential delays in seeking class certification and the financial health of Defendants. (Id.) Based
10 upon these considerations, Plaintiff and class counsel have determined that the settlement is fair,
11 adequate, and reasonable, and is in the best interests of the class. (Id.)

12 **2. Settlement Terms**

13 The settlement was reached on a class wide and PAGA basis. The settlement class
14 includes Plaintiff and non-exempt employees of Defendants in California, who based on
15 Defendants' records, were employed during the class period between October 1, 2016 through
16 April 1, 2021. (Lebe Decl., ¶ 14.)

17 In exchange for a release of claims, Defendants are providing substantial compensation to
18 Plaintiff and the settlement class. (Lebe Decl., ¶ 15.) Defendants have agreed to pay an amount
19 of \$527,5000 to settle the class and PAGA claims, of which \$25,000 is reserved to settle the
20 PAGA claims. (Id.) The settlement includes the following: (1) Plaintiff's attorneys' fees up to
21 one third of the settlement; (2) Plaintiff's counsels' reasonable litigation costs necessary to
22 prosecute and settle this litigation and administer the Agreement, estimated at no more than
23 \$15,000; (3) a \$5,000 enhancement award to Plaintiff¹; (4) settlement administration costs not to
24 exceed \$15,0000; (5) and a payment of \$18,750 to the LWDA, which represents 75 percent of the
25 PAGA settlement amount. (Id.) Class members will not be required to return any claims form.
26

27 _____
28 ¹ Plaintiff has agreed to a general release of all claims, which is broader than the release given by the class. (Lebe
Decl., ¶ 32; James Decl., ¶ 17.)

(Id.) Once all the proper deductions have been made, the average gross payment to each Participating Class Member will be \$721.49, and the highest payment will be \$1,339.12. (Id.)

3. Preliminary Approval

On July 14, 2021, Plaintiff filed her motion for preliminary approval of class action settlement and supporting papers with this Court. (Lebe Decl., ¶ 17.) Following this, the Court issued a checklist on August 12, 2021, regarding certain issues with Plaintiff's moving papers, including questions regarding the settlement and class notice. (Lebe Decl., ¶ 18.) As a result, on September 27, 2021, Plaintiff filed a revised settlement agreement and a supplemental declaration of Jonathan M. Lebe to address the issues identified by the Court. (Id.) Plaintiff also submitted the revised settlement agreement to the LWDA. (Id.)

Following receipt of this supplemental declaration and amended settlement agreement, the Court then issued an additional checklist on October 7, 2021, including revisions to the class notice and request for exclusion form. (Lebe Decl., ¶ 19.) As a result, on November 3, 2021, Plaintiff submitted a second revised settlement agreement and supplemental declaration of Jonathan M. Lebe providing that the Parties had made the revisions requested by the Court. (Id.) Plaintiff also submitted the second revised settlement agreement to the LWDA. (Id.)

After receipt of this supplemental briefing, on November 18, 2021, the Court tentatively approved Plaintiff's Motion for Preliminary Approval, but requested that the Parties submit a revised proposed order including the deadline to submit disputes and timeline for final approval hearing. (Lebe Decl., ¶ 20.) On November 29, 2021, Plaintiff submitted a revised proposed order which included the revisions requested by the Court. (Id.)

On December 21, 2021, Plaintiff's Unopposed Motion for Preliminary Approval of the Class Action Settlement was granted. (Lebe Decl., ¶ 21.) The Court's Order Granting Preliminary Approval was also filed on that date setting forth the various deadlines regarding final approval and next steps regarding the settlement. (Id.) In its Order, the Court appointed Plaintiff as the Class Representative, her attorneys as Class Counsel, and CPT Group, Inc. as the Administrator, conditionally certified the Class, approved the Class Notice, and directed mailing

of the Class Notice to the Class. The Court also preliminarily found that the settlement was fair to the Class. (Id.)

4. Notice To Class Members and Right to Opt Out Or/Object to Settlement

On January 25, 2021, the Administrator mailed the Class Notice via first class U.S. Mail. (Lebe Decl., ¶ 22.) The Administrator mailed the notice to 415 Class Members. (Id.) The Notice informed the Class of their right to participate in the Settlement, to automatically receive a payment without the need to return a claim form, to object or exclude themselves from the Settlement, how to dispute the information on which their payments would be made and the procedures and timing for doing each act.

5. The Class Response to the Notice

The deadline to submit disputes, requests for exclusion or objections is March 11, 2022.² (Lebe Decl., ¶ 23.) Through the present time, no Class Members have objected to any term of the Settlement or disputed the number of workweeks worked. (Id.) Through the present time, only 3 Class Members timely requested to be excluded. (Id.) These facts are indicative that the Settlement is fair, reasonable, and adequate and has been embraced by the Class.

III. LEGAL ARGUMENT

A. The Settlement is Fair, Adequate, and Reasonable

Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement, and supplemental briefing, conducted a thorough analysis of the terms of the proposed Settlement in light of Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1802, (establishing factors to support a presumption of fairness) and Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130 (establishing factors to determine whether the proposed Settlement is in the best interest of the Class, and is adequate and reasonable). Having reviewed this analysis, the Court granted the motion and preliminarily approved the settlement. (Lebe Decl., ¶ 16. [Discussing Plaintiff's Kullar analysis in support of preliminary approval].)

² CPT Group, Inc. will file its declaration shortly after the exclusion and objection deadlines have elapsed.

1 The fourth factor under Dunk, Class reaction to the Settlement and number of objectors,
2 could not be known until after the dissemination of the Notice to the Class. Through the present,
3 no Class Member has objected to any term of the Settlement. Moreover, based on estimated
4 settlement calculations at this time, the average gross payment to each Participating Class
5 Member will be \$721.49, and the highest payment will be \$1,339.12. Accordingly, the proposed
6 Settlement continues to be entitled to a presumption of fairness and should be finally approved as
7 it provides significant value to the Class.

8 Class Counsel believes the Settlement is in the best interest of the Class based on the
9 negotiations and a detailed knowledge of the issues present in this Action. (Lebe Decl. ¶ 13.)
10 The length and risks of trial and other normal perils of litigation which affect the value of the
11 claims were all weighed in reaching the Settlement. (Id.) In addition, the defenses argued by
12 Defendant, the uncertainty of proceeding as a representative action, and of obtaining class
13 certification, the difficulties of complex litigation, the lengthy process of establishing specific
14 damages, the discretionary nature of civil penalties, and various possible delays and appeals, were
15 also carefully considered by Class Counsel before agreeing to the proposed Settlement. (Id.)

16 Class Counsel respectfully requests the Court find the proposed Settlement fair, adequate
17 and reasonable, grant final approval, and enter final judgment in favor of the Class.

18 **B. Attorneys' Fees and Litigation Costs are Reasonable**

19 Class Counsel now applies for an award of attorneys' fees of \$175,833.33 for attorney
20 fees and reimbursement of their litigation costs in the sum of \$11,575.34. (Lebe Decl. ¶ 24.)
21 California state and federal courts have recognized that an appropriate method for determining an
22 award of attorneys' fees is based on a percentage of the total value of benefits to Class Members
23 by the settlement, also known as the "common fund" method. (Serrano v. Priest (1977) 20 Cal.3d
24 25, 34; Boeing Co. v. Van Gemert (1980) 444 U.S. 472, 478; Vincent v. Hughes Air West, Inc.
25 (9th Cir. 1977) 557 F.2d 759, 769.)³ "Despite its primacy, the lodestar method is not necessarily
26

27 ³The California Supreme Court also authorizes trial courts to use Federal Rule 23 and cases applying it for guidance.
28 (See Vasquez v. Superior Court (1971) 4 Cal.3d 800, 821; Green v. Obledo (1981) 29 Cal.3d 126, 145-146; Dunk v.

utilized in common fund cases.” (Lealao v. Beneficial California, Inc. (2000) 82 Cal.App.4th 19, 27, Dunk v. Ford Motor Co., 48 Cal.App.4th at 1808 [awarding attorney fees as a reasonable percentage of a common fund may be used where a settlement is a certain or easily calculable sum of money].)

The California Supreme Court has reaffirmed attorneys’ fees in common fund cases are properly granted based on a percentage of recovery. (Laffitte v. Robert Half International, Inc. (2016) 1 Cal.5th 480, 503.) A fee award based on a percentage of the common fund recovery here is proper as it spreads the attorneys’ fees among all beneficiaries of the fund, aligns the incentives between plaintiffs’ counsel and the class, is a better approximation of the market conditions in a contingency case, and encourages class counsel to seek early settlement and avoid unnecessarily prolonging the litigation. (Id.) The Court also approved the use of a lodestar cross-check at the option of the trial court to double check “the reasonableness of the percentage fee through a lodestar calculation.” (Id. at 504.)

Here, Class Counsel has undertaken representation at their own expense, with compensation wholly contingent upon providing a benefit to the Class. (Lebe Decl., ¶ 28.) Class Members will benefit significantly by the terms of the proposed Settlement by receiving substantial monetary compensation. (Id.) Because there is a defined and clearly traceable benefit to the Class, the Court should base its award of attorneys’ fees using a “common fund” approach to compensate Class Counsel.

1. The Requested Attorneys’ Fee Is Within the Range of Fees Approved in Comparable Common Fund Cases.

Several studies of class action fee awards have found the median common fund fee award is approximately one-third of the total settlement fund. (*See, e.g., Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, n.11 [numerous studies have shown “fee awards in class actions average around one-third of the recovery.”]; Reagan W. Silber and Frank E. Goodrich, Common Funds

Ford Co., 48 Cal.App. 4th at 1801 fn.7.) Where appropriate, Plaintiffs cite Federal Rule 23 and federal case law as well.

1 and Common Problems: Fee Objections and Class Counsel’s Response, 17 Rev. Litig. 525, 546
2 (1998); T. Willging, L. Hooper and R. Niemic, Empirical Study of Class Actions in Four Federal
3 District Courts: Final Report to the Advisory Committee on Civil Rules, 90 (1996) [finding that
4 attorneys’ fees in class litigation “were generally in the traditional range of approximately one-
5 third of the total settlement”].)

6 Here, Class counsel seeks one-third (\$175,833.33) of the \$527,500 settlement in
7 attorneys’ fees. Class Counsel’s request for 33.3 percent of the common fund created falls in the
8 mid-range of fee percentage awards which commonly range from 25 percent to 50 percent of a
9 common fund. The requested sum constitutes fair compensation for undertaking complex, risky,
10 expensive, and time-consuming litigation on a contingent basis for years, and compensating Class
11 Counsel for their efforts and the results achieved for the Class as well as for Defendant’s current
12 and future employees. Numerous state and federal courts in California routinely approve fee
13 requests equal to or more than the amount sought herein. Some courts have found an award of
14 33 percent of the common fund represents the “benchmark” in California. (Smith v. CRST Van
15 Expedited, Inc., 10-CV-1116- IEG WMC, 2013 WL 163293, *5 (S.D. Cal. Jan. 14, 2013) [“These
16 percentages compare favorably with both California (33%) and federal (25%) benchmarks.”];
17 Dennis v. Kellogg Co., 09-CV-1786-L WMC, 2013 WL 6055326, at *7 (S.D. Cal. Nov. 14, 2013)
18 [“This percentage compares favorably with both California (33%) and federal (25%) benchmarks
19 and the requested fee compares well with a lodestar cross-check as well.”].)

20 Class Counsel’s fee request is in line with awards in similar cases in California and
21 nationwide and demonstrates Class Counsel’s fee request is consistent with market rates and is
22 reasonable.

23 **2. A Lodestar Cross-Check Confirms the Reasonableness of the**
24 **Requested Fee as Class Counsel’s Lodestar Exceeds the Fees**
25 **Requested**

26 Class Counsel’s fee request is reasonable when calculated using the lodestar method.
27 Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably
28 spent on the case and the reasonable hourly compensation of the attorney. (Serrano v. Priest

1 (1977) 20 Cal. 3d 25, 48.) The court then enhances this lodestar figure by a “multiplier” to
2 account for a range of factors, such as the novelty and difficulty of the case, its contingent nature,
3 and the degree of success achieved. (See Id. at 49; see also Ketchum v. Moses (2001) 24 Cal.4th
4 1122, 1132-36; PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1096; Thayer v. Wells
5 Fargo Bank (2001) 92 Cal.App.4th 819, 834 “[t] there is no ... rule limiting the factors that may
6 justify an exercise of judicial discretion to [adjust the] lodestar”].

7 The lodestar fee on Class Counsel’s hours is \$159,827.50. (Lebe Decl., ¶ 26.) Class
8 Counsel seeks \$175,833.33 in fees which reflects the lodestar fee times a multiplier of
9 approximately 1.10. The requested multiplier is reasonable and consistent with California law.
10 Indeed, under California law, lodestar multipliers can range from 2 to 4 or even higher. (4
11 Newberg On Class Actions § 14.7 [courts typically approve percentage awards based on lodestar
12 cross-checks of 1.9 to 5.1 or even higher]; Vizcaino, 290 F.3d at 1050 [affirming fee award where
13 the lodestar multiplier was 3.65]; McKenzie v. Fed. Express Corp. (C.D.Cal. July 2, 2012, No.
14 CV 10-02420 GAF (PLAx)) 2012 U.S.Dist.LEXIS 103666, at *2 [approving a multiplier of 3.2
15 on a lodestar cross-check in percentage-based fees in wage and hour class action]; Spann v. J.C.
16 Penney Corp. (C.D.Cal. 2016) 211 F. Supp. 3d 1244, 1265 [finding that a 3.07 multiplier is “well
17 within the range for reasonable multipliers” under Laffitte.])

18 In class actions, such as this one, where the value of the benefit conferred to the class “can
19 be monetized with a reasonable degree of certainty,” court may, “adjust the lodestar in comparison
20 to a percentage of the common fund to ensure that the fee awarded is reasonable and within the
21 range of fees freely negotiated in the legal marketplace in comparable litigation.” (Consumer
22 Privacy Cases (2009) 175 Cal.App.4th 545, 557.) In doing so, “the court determines,
23 retrospectively, whether the litigation involved a contingent risk or required extraordinary legal
24 skill justifying augmentation of the unadorned lodestar in order to approximate the fair market
25 for such services.” (Id. at 556; see also Laffitte, 1 Cal.5th at 503-05.)

26 The fee award requested here, including the lodestar multiplier, is justified because Class
27 Counsel achieved a significant monetary recovery for the Settlement Class in an uncertain and
28 risky case while bearing the substantial burdens of representation on a contingency basis, and the

1 fees requested are in line with the market rate. (Vizcaino v. Microsoft Corp. (9th Cir. 2002) 290
2 F.3d 1043, 1048-51 [finding that exceptional results in a contingency case, significant risk and
3 the absence of supporting precedents, are proper considerations in awarding attorneys' fees].)
4 Here, Class Counsel negotiated a substantial recovery for the Settlement Class without a single
5 Settlement Class member objecting to the Settlement or Class Counsel's requested fees.

6 Additionally, the average settlement payment in this case (which will be \$721.49 and the
7 highest recovery will be \$1,339.12) significantly exceeds average settlement payments in similar
8 wage and hour class action settlements. (*See, e.g., Schiller v. David's Bridal, Inc.* (E.D.Cal. June
9 11, 2012, No. 1:10-cv-00616-AWI-SKO) 2012 U.S.Dist.LEXIS 80776, at *48 [finding that
10 average payment to class members of less than \$200 was a "good" result]; Williams v.
11 Centerplate, Inc. (S.D.Cal. Aug. 26, 2013, No. 11-CV-2159 H-KSC) 2013 U.S.Dist.LEXIS
12 121307, at *8 [granting final approval of class action settlement where average recovery for each
13 class member was approximately \$108].)

14 This sizable settlement was further in the best interests of the class as this case was fraught
15 with risk as to both class certification and merits consideration. Indeed, the issue of class
16 certification had not yet been presented to the Court. Further, Defendants argue that all hours
17 worked were paid for at the correct rate, and if there was, individual issues predominate as to
18 what extent class members were not paid reporting time pay correctly and that it did in fact pay
19 reporting time pay. Defendants also argue that none of their wage and hour policies are facially
20 invalid, and that Defendant appropriately paid its employees at all times and was compliant with
21 all applicable wage-and-hour laws. If successful at defeating a class certification motion, the
22 class would have recovered nothing as a result of this litigation. Indeed, class certification is a
23 major hurdle for Plaintiff and the Class. (*See Munoz*, 186 Cal. App. 4th at 411 [uncertainty of
24 class treatment was significant question which supported the decision to settle].)

25 Here, Class Counsel should also be compensated for the risks involved in undertaking this
26 litigation, and expending considerable effort, all while working on a pure contingency basis.
27 Since undertaking representation of Plaintiff, Class Counsel have borne all the costs of litigation
28 without receiving any compensation to date. Class Counsel's efforts have included conducting

1 pre-filing investigation, analyzing Plaintiff's claims, conducting ongoing legal research,
2 performing substantial data analysis of Defendant's time and payroll records, preparing for and
3 attending mediation, preparing the Motions for Preliminary and Final Approval, and otherwise
4 litigating this case. Given the considerable potential for adverse outcomes in this case, including,
5 but not limited to, losing on class certification and/or merits issues, the contingent risk borne by
6 Class Counsel was great.

7 Indeed, a multiplier is further justified primarily because Plaintiff settled prior to filing a
8 time-consuming certification motion. The decision to settle early is to be lauded and not
9 punished, since Class Members will now avoid the risks of additional litigation and are assured
10 of substantial and immediate monetary recovery. Indeed, under California law, "the promptness
11 of settlement cannot be used to justify the refusal to apply a multiplier to reflect the size of the
12 class recovery without exacerbating the disincentive to settle promptly inherent in the lodestar
13 methodology." (Lealao, 82 Cal. App. 4th at 53.) According to Lealao, to not apply a multiplier
14 under these circumstances would be deleterious to California policy, as "awards that are too small
15 [will] chill the private enforcement essential to the vindication of many legal rights and obstruct
16 the representative actions that often relieve the courts of the need to separately adjudicate
17 numerous claims." (Id. at 53.)

18 As the results obtained by Class Counsel for the Class are great and the risks presented by
19 this litigation significant taken on contingency were significant, Class Counsel submit that the
20 requested fee award is fair, reasonable, and adequate and should be approved.

21 **3. Class Counsel's Hourly Rates are Reasonable**

22 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
23 experience in the relevant community. (PLCM Group, Inc. v. Drexler (2000) 22 Cal. 4th 1084,
24 1095; Hopson v. Hanesbrands Inc. (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900.)
25 When determining a reasonable hourly rate, courts may consider factors such as the attorney's
26 skill and experience, the nature of the work performed, the relevant area of expertise and the
27 attorney's customary billing rates. (Flannery v. California Highway Patrol (1998) 61 Cal. App.
28 4th 629, 632.)

1 Lebe Law, APLC sets its billing rates of its attorneys to be consistent with the prevailing
2 market rates in the private sector for attorneys and staff of comparable skill, qualifications and
3 experience by monitoring the prevailing market rates charged by both defense and plaintiff law
4 firms. (Lebe Decl., ¶ 27.) Jonathan M. Lebe's hourly rate is \$700 and is in line with rates typically
5 approved in wage-and-hour class action litigation in California and has been approved by
6 numerous California state and federal courts. (Lebe Decl., ¶¶ 26-27.) As Associate Attorney of
7 Lebe Law, APLC, Annaliz Loera's hourly rate is \$375. (Lebe Decl., ¶ 26.) Class Counsel's skill
8 and experience support their hourly rates. (Lebe Decl., ¶¶ 3-10, 27.) Their practice is limited
9 exclusively to litigation, focusing on the representation of employees and specifically in wage-
10 and-hour employment class action matters. (Lebe Decl., ¶¶ 3-10.) Class Counsel have been
11 appointed Class Counsel or Co-Class Counsel in numerous cases. (Lebe Decl., ¶¶ 3-8.) Class
12 Counsel's hourly rate has been accepted by numerous Courts in the past. (Lebe Decl., ¶¶ 3-8.)
13 Other wage-and-hour attorneys working as Class Counsel before California courts charge
14 comparable if not higher rates, and Class Counsel's proposed rates are consistent with those
15 suggested by the Laffey Matrix and 2020 Real Rate Report. (Lebe Decl. ¶ 27, Exhibits 3 and 4.)

16 **C. The Litigation Expenses Are Reasonable**

17 Class Counsel seeks reimbursement of their litigation costs and expenses of \$11,575.34,
18 which is less than the \$15,000.00 budgeted by the parties in the settlement agreement. These costs
19 were reasonable and necessary to the prosecution of this case, are reasonable, and are unopposed
20 by the Class and Defendant. (Lebe Decl., ¶ 24, Exhibit B.)

21 **D. Settlement Administration Expenses are Reasonable**

22 Class Counsel also seeks payment of \$13,500 to CPT Group, Inc. for its work in
23 administering the Settlement. CPT Group, Inc.'s work to date on this matter includes, among
24 other things: receipt, review and analysis of data produced by Defendant following preliminary
25 approval; a database search of the U.S. Post Office to update all mailing addresses before the
26 initial mailing; formatting the Class Notice; mailing via first class U.S. Mail; forwarding returned
27 Class Notices; constructing and maintaining a website for this matter; providing weekly status
28 reports; and, following final approval, calculation of Settlement Payment checks, mailing checks

1 with tax forms to the 412 Participating Class Members; distribution of other funds as ordered by
2 the Court; preparing tax reports; and handling Class Member calls and uncashed checks.

3 **E. The Proposed PAGA Payment is Reasonable**

4 The settlement of claims under the Private Attorneys General Act of 2004, as amended
5 (“PAGA”) for civil penalties in the sum of \$25,000. Of this amount, 75 percent (\$18,750) will
6 be paid to the Labor Workforce Development Agency (“LWDA”) and 25 percent of the remaining
7 funds (\$6,250) will be paid to the aggrieved employees, as required by the statute. The PAGA
8 settlement of \$25,000 is reasonable and appropriate under the circumstances. The Parties
9 negotiated a good faith amount for PAGA penalties to be paid to the LWDA and to the Class. The
10 portions to be paid to the LWDA and the Class was not the result of self-interest at the expense
11 of any Class Member. Where parties “negotiate[] a good faith amount” for PAGA penalties and
12 “there is no indication that this amount was the result of self-interest at the expense of other Class
13 Members,” such amounts are generally considered reasonable. (Hopson v. Hanesbrands Inc., No.
14 CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009).) The amount to be paid to
15 the LWDA is considerably higher than other approved PAGA settlements. (*See, e.g., Hopson*,
16 2008 WL 3385452, at *1 [approving PAGA settlement of 0.3% or \$1,500]; Garcia v. Gordon
17 Trucking, Inc., No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575, at *3 (E.D. Cal. Oct. 31, 2012)
18 [approving settlement of 0.27%]; Villacres v. ABM Indus. Inc., 189 Cal. App. 4th 562 (2010),
19 review denied (Feb. 16, 2011) [PAGA claims may be settled without any money allocated to
20 those claims].)

21 Moreover, Plaintiff provided notice to the LWDA of the proposed settlement at the time
22 that she filed her motion for preliminary approval. No objection or response has been received
23 from the LWDA. This is indicative of a fair PAGA settlement.

24 **F. The Requested Service Payment Award is Reasonable**

25 Plaintiff and appointed Class Representative Melinda James respectfully requests an
26 award of \$5,000 for having initiated and prosecuted this litigation on behalf of the Class for nearly
27 one and one-half years, for work performed, providing information and documents to Class
28 Counsel, providing a general release of all claims, assuming responsibility of defense costs had

1 this case been lost, and the substantial benefits to be received by the other 412 Participating Class
2 Members. (Lebe Decl., ¶ 32; James Decl., ¶ 17.)

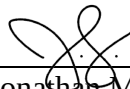
3 **IV. CONCLUSION**

4 The Settlement reached in this class action litigation will efficiently, economically, and
5 favorably resolve this litigation which has been ongoing for nearly one and one-half years.
6 Accordingly, Plaintiff and the Class respectfully request the Settlement be given final approval,
7 and that Class Counsel attorneys' fees and litigation costs, the Class Representative's service
8 payment, the Administrator's expenses, and the PAGA payment be awarded as requested by this
9 motion.

10
11 Dated: March 2, 2022

Lebe Law, APLC

12
13 By:



Jonathan M. Lebe
Annaliz Loera

14
15
16 Attorneys for Plaintiff Melinda James, Individually and on
17 behalf of all others similarly situated
18
19
20
21
22
23
24
25
26
27
28