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Attorneys for Plaintiff Melinda James,
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 MELINDA JAMES' REPORT
RE: COMPLIANCE WITH PROCEDURAL
GUIDELINES FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENTS**

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

Hearing Information:

Date: August 5, 2021

Time: 2:00 p.m.

Location: Dept. CX-102

Plaintiff respectfully submits that the proposed settlement is in compliance with the Court's guidelines for class actions and PAGA settlements, as detailed below:

Procedural Guidelines for Preliminary Approval of Class Action Settlements:

1) **Noticed Motion:** Preliminary approval of this class action settlement is sought by way of regularly noticed motion.

2) **Claims Made vs. Checks-Mailed Settlement / Cy Pres:** This settlement is non-reversionary. To participate, settlement class members need not submit any claims form. Settlement checks will be mailed following the final approval hearing to all class members that do not opt out. (Lebe Decl., ¶ 17, Exhibit 1, Section 1(U) ["The total value of the Settlement is a non-reversionary Five Hundred, Twenty-Seven Thousand, Five Hundred Dollars and Zero Cents (\$527,500.00) ... No portion of the Gross Settlement Amount will revert to Defendant for any reason."]; Exhibit 1, Section III(K)(4)(a) ["A Class Member who does not complete and mail a timely Exclusion Form will automatically be included in the Settlement, will receive an Individual Settlement Share, and be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement."].) (*Id.*) Funds from uncashed checks will be remitted to the Department of Industrial Relations Unpaid Wages Fund in compliance with Code of Civil Procedure § 384. (Lebe Decl., ¶ 17, Exhibit 1, Section III(H)(6) and Section III(K)(10).)

3) **Reasonableness of Settlement Amount:** Plaintiff submits that the settlement amount is reasonable based on the *Kullar* analysis provided. (Motion at III (B).)

4) **Allocation:** The allocation of taxable and non-taxable elements of the settlement is reasonably consistent with Plaintiff's *Kullar* analysis. (Motion at III (B).) Specifically, the proposed settlement is allocated as 1/3 wages, 1/3 penalties and 1/3 interest. (Lebe Decl., ¶ 17, Exhibit 1, Section III(G)(2)).) Plaintiff has estimated that Defendant's maximum potential exposure on class claims excluding PAGA penalties, waiting time penalties and interest could have reached approximately \$5,256,832 if Plaintiff had successfully certified each claim, overcame Defendant's arguments that the classes should not be certified due to individualized issues, and prevailed at trial. (Lebe Decl., ¶ 14.) The maximum, stacked PAGA penalties could amount to

1 \$8,776,250 and the maximum waiting time penalties could amount to \$1,261,076. Further, the
2 prejudgment interest on the class-wide damages was approximately \$324,973 as of mediation and
3 would of course increase until any judgment was paid. Based on the foregoing, the net settlement
4 amount of \$297,916.67 being allocated as 1/3 wages, 1/3 penalties and 1/3 interest is reasonably
5 consistent with Plaintiff's *Kullar* analysis. Additionally, under the proposed settlement, Defendant
6 is solely responsible for paying all payroll taxes. (Lebe Decl., ¶ 17, Exhibit 1, Section 1(U)
7 ["Defendant's portion of payroll taxes as the Class Members' current or former employer is
8 excluded from the GSA and will be paid by Defendant separately."])

9 5) **Release:** The proposed settlement only releases claims of class members that were
10 pled in the PAGA complaint, litigated in this action and investigated in advance of mediation, and
11 class claims that will be added into Plaintiff's First Amended Complaint that mirror the PAGA
12 claims originally pled but on a class-wide basis. (Lebe Decl., ¶ 17, Exhibit 1, Sections I(FF),
13 I(GG), III(L).) Only Plaintiff is providing a general release. (Lebe Decl., ¶ 17, Exhibit 1, Section
14 I(GG).) Additionally, the release of class members is worded as a plain language summary in the
15 settlement agreement and notice.

16 6) **Settlement Administration:** The Parties have chosen CPT Group, Inc. to
17 administer the settlement. (Lebe Decl., ¶ 17, Exhibit 1, Section III(I).) CPT Group, Inc. is an
18 experienced settlement administrator. (Lebe Decl., ¶ 18, Exhibit 2.) The proposed settlement
19 provides for a dispute resolution process. (Lebe Decl., ¶ 17, Exhibit 1, Section III(K)(2)(d) ["Class
20 Members may dispute the information provided in their Class Notice, but must do so in writing,
21 via first class mail, and it must be postmarked by the Response Deadline. To the extent Class
22 Members dispute the number of weeks to which they have been credited or the amount of their
23 Individual Settlement Share, Class Members must produce evidence to the Settlement
24 Administrator showing that such information is inaccurate. Absent evidence rebutting
25 Defendant's records, Defendant's records will be presumed determinative. However, if a Class
26 Member produces evidence to the contrary, the Parties will evaluate the evidence submitted by the
27 Class Member and will make the final decision as to the number of eligible weeks that should be
28 applied and/or the Individual Settlement Share to which the Class Member may be entitled."])

1 7) **Notice Procedure:** The proposed settlement provides for a procedure of notice by
2 first-class mail followed by re-sending any returned mail after a skip trace. (Lebe Decl., ¶ 17,
3 Exhibit 1, Section III(K)(2).) The proposed settlement provides for 45 days' notice, which has
4 commonly been accepted as sufficient notice in the experience of Plaintiff's counsel.

5 8) **Notice Content:** The notice provides the (1) contact information for class counsel
6 to answer questions; (2) an URL to a web site, maintained by the claims administrator, that has
7 links to the notice and the most important documents in the case; and (3) for persons who wish to
8 review the court's docket in the case, the URL for the court. (Lebe Decl., ¶ 17, Exhibit A, pg. 7,
9 Section 15.) The Parties sought to draft the proposed notice using the format and content of The
10 Federal Judicial Center's "Illustrative" Forms of Class Action Notices.

11 9) **Exclusion and Objection:** The notice instructs class members who wish to exclude
12 themselves to send a letter to the settlement administrator setting forth their name and a statement
13 that they request exclusion from the class and do not wish to participate in the settlement. (Lebe
14 Decl., ¶ 17, Exhibit A, Section 13 ["To object, you may **either** (1) submit a timely written objection
15 to the Settlement Administrator according to the procedures below, or (2) appear at the Final
16 Approval Hearing to verbally object to the Settlement in person or through your own attorney at
17 your own expense. A written objection must contain: (1) the full name, address, and telephone
18 number of the Settlement Class Member; (2) your signature; and (3) a written statement of the
19 grounds for your objection."]) The notice does not have blanket statements that objections will be
20 waived or not considered if not timely or otherwise compliant. Plaintiff's counsel will file a single
21 packet of any and all objections with the Court in its motion for final approval.

22 10) **Incentive Awards:** The proposed settlement provides for a \$5,000 enhancement
23 award to Plaintiff, which the Parties understand will be considered by the Court at final approval.
24 (Lebe Decl., ¶ 16.)

25 11) **Attorney's Fees:** The proposed settlement provides for attorney's fees up to
26 \$175,833.33, which the Parties understand will be considered by the Court at final approval. (Lebe
27 Decl., ¶ 16.)

12) **Concurrent Pending Cases:** After a reasonable and diligent inquiry, Plaintiff is aware of not concurrent pending cases. (Lebe Decl., ¶ 20.) Specifically, Plaintiff’s counsel did a search on the submission page for the Labor Workforce Development agency and did not see any PAGA notices submitted in the relevant time frame. (*Id.*) Plaintiff’s counsel also searched for filed lawsuits using Lexis’ CourtLink services. (*Id.*) No concurrent pending cases were found. (*Id.*)

13) **Proposed Order Granting Preliminary Approval:** A proposed order granting preliminary approval is concurrently filed with this Motion. The proposed order includes the requisite “recital,” “finding,” and “order” language. The proposed order includes the proposed notice as an exhibit, as well as all future events contemplated therein.

Procedural Guidelines for Private Attorneys General Act (“PAGA”) Settlements:

1) **Comprehensive Definition of Aggrieved Employees:** The PAGA Settlement has a comprehensive definition of the group of allegedly aggrieved employees represented in this action. (Lebe Decl., ¶ 17, Exhibit 1, Section I(R) [“The aggrieved employees eligible to recover the PAGA payment shall consist of all individuals employed as non-exempt hourly workers by Defendant within the State of California from April 6, 2019 through April 1, 2021 (‘PAGA Period’)”].)

2) **Definition of the PAGA Claims:** The PAGA claims are based on Defendant’s violations of the Labor Code. (Lebe Decl., ¶ 17, Exhibit 1, Section II(A) “Per the Complaint, the Plaintiff alleges, *inter alia*, on behalf of herself, all others similarly situated, and other aggrieved employees, that Defendant violated California state wage and hour laws and the California *Business and Professions Code* section 17200 *et seq.* and PAGA as a result of Defendant’s wage and hour policies and practices. Specifically, Plaintiff alleges that Defendant failed to pay all wages, including minimum wages, regular wages, overtime and double time; failed to properly calculate overtime and double time wages; failed to provide meal breaks (including without limitation first and second meal breaks) each day based on the hours worked by each employee, including meal breaks that were short, late, interrupted, and/or missed altogether; failed to authorize and permit legally compliant rest breaks each day based on the hours worked by each

employee, including rest breaks that were short, late, interrupted, and/or missed altogether; failed to both pay for reporting time pay and to pay for reporting time at the legally required rate; failed to both pay for on-call time and to pay on-call time at the legally required rate; and failed to timely pay all wages during employment each pay period for every employee. Plaintiff further alleged that the aforementioned resulted in the Class receiving inaccurate wage statements; the underpayment of wages to employees upon termination and/or resignation; unfair business practices; and a violation of PAGA.”].)

3) **Gross Settlement Amount:** The Gross Settlement Amount is as follows:

a. **Consideration Received by Plaintiff:** Plaintiff will receive an individual settlement payment of \$20,000 to settle her individual claims. (Lebe Decl., ¶ 17, Exhibit 1, Section II(V) [“The payment by Defendant to Plaintiff in accordance with the separate individual settlement agreement entered into between the Parties totaling \$20,000 regarding her claims of retaliation, wrongful termination, and other related claims.”].)

b. **Consideration Received by Aggrieved Employees:** Aggrieved Employees will receive a proportional share of the PAGA Payment and if also a class member, will receive a proportional share of the Net Settlement Amount. (Lebe Decl., ¶ 17, Exhibit 1, Section III(H)(6) [“The Settlement Administrator shall pay each Eligible Aggrieved Employee according to their proportional share, which will be based upon the total number of pay periods he or she was employed during the PAGA Period. The individual share will be calculated by determining the total number of pay periods the Eligible Aggrieved Employees were employed during the PAGA Period (i.e., the sum of all pay periods of employment for each eligible aggrieved employee), and dividing that number into the \$6,250 amount allocated to Eligible Aggrieved Employees to determine the monetary value assigned to each pay period. That number will then be multiplied by the individual eligible aggrieved employee’s total number of pay periods employed during the PAGA Period to determine that individual’s proportional share. Settlement checks issued to the Eligible Aggrieved Employees pursuant to this Joint Stipulation and Settlement Agreement shall expire 180 days from the date they are issued by Defendant. Any unclaimed funds after the 180 days shall be turned over by the Settlement Administrator, with

1 information for each Eligible Aggrieved Employee who failed to timely cash his/her settlement
2 check, to the state Department of Industrial Relations Unpaid Wages Fund in the name of the
3 Eligible Aggrieved Employee.”]; Lebe Decl., ¶ 17, Exhibit 1, Section III(G)(1)(a) [“Each
4 Participating Class Member will receive a proportionate share of the Net Settlement Amount that
5 is equal to (i) the number of weeks he or she worked during the Class Period based on the Class
6 data provided by Defendant, divided by (ii) the total number of weeks worked by any and all
7 Participating Class Members collectively, during the Class Period based on the same Class data,
8 which is then multiplied by the Net Settlement Amount. One day worked in a given week will be
9 credited as a week for purposes of this calculation. Therefore, the value of each Participating Class
10 Member’s Individual Settlement Share ties directly to the amount of weeks that he or she
11 worked.”].)

12 c. **Allocation:** The PAGA Payment of \$25,000 is allocated 75%/25% as
13 required by Section 2699(i). (Lebe Decl., ¶ 17, Exhibit 1, Section II(AA) [“The PAGA Payment
14 consists of \$25,000 of the Gross Settlement Amount allocated to satisfy the PAGA penalties claim
15 as alleged in the Class Action. Seventy-five percent (75%) (\$18,750) of the PAGA Payment shall
16 be paid to the LWDA, and twenty five percent (25%) (\$6,250) of the PAGA payment shall be part
17 of the Net Settlement Amount distributed to Eligible Aggrieved Employees, on a pro rata basis”].)

18 d. **Attorney’s Fees, Attorney’s Costs, and Administration Costs:** The
19 proposed settlement provides for attorney’s fees up to \$175,833.33 (for prosecution of both class
20 and PAGA claims), which the Parties understand will be considered by the Court at final approval.
21 (Lebe Decl., ¶ 16.) The proposed settlement provides for attorney’s costs up to \$15,000, which
22 the Parties understand will be considered by the Court at final approval. (Lebe Decl., ¶ 16.) The
23 proposed settlement provides for administration costs up to \$15,000, which the Parties understand
24 will be considered by the Court at final approval. (Lebe Decl., ¶ #.)

25 e. **Plaintiff’s Enhancement:** The proposed settlement provides for a \$5,000
26 enhancement award to Plaintiff (for acting as both a PAGA and class representative), which the
27 Parties understand will be considered by the Court at final approval. (Lebe Decl., ¶ 16.)

f. **Other Amount(s) Deducted from Gross Settlement Amount:** There are no other additional deductions from the Gross Settlement Amount besides the deductions already mentioned. (Lebe Decl., ¶ 17, Exhibit 1, Section I(Y) [“The total amount of money available for payout to Participating Class Members, which is the GSA less the Attorney Fee Award, Cost Award, Class Representative Enhancements, the portion of the PAGA Payment paid to the LWDA and aggrieved employees, and Administration Costs. In other words, the NSA is the portion of the GSA that will be distributed to Class Members who do not request exclusion from the Settlement.”].)

4) **Aggrieved Employees Payment:** Aggrieved Employees will be paid an amount proportional to the number of pay periods he or she worked for Defendant during the PAGA period. (Lebe Decl., ¶ 17, Exhibit 1, Section III(H)(6) [“The Settlement Administrator shall pay each Eligible Aggrieved Employee according to their proportional share, which will be based upon the total number of pay periods he or she was employed during the PAGA Period. The individual share will be calculated by determining the total number of pay periods the Eligible Aggrieved Employees were employed during the PAGA Period (i.e., the sum of all pay periods of employment for each eligible aggrieved employee), and dividing that number into the \$6,250 amount allocated to Eligible Aggrieved Employees to determine the monetary value assigned to each pay period. That number will then be multiplied by the individual eligible aggrieved employee’s total number of pay periods employed during the PAGA Period to determine that individual’s proportional share. Settlement checks issued to the Eligible Aggrieved Employees pursuant to this Joint Stipulation and Settlement Agreement shall expire 180 days from the date they are issued by Defendant. Any unclaimed funds after the 180 days shall be turned over by the Settlement Administrator, with information for each Eligible Aggrieved Employee who failed to timely cash his/her settlement check, to the state Department of Industrial Relations Unpaid Wages Fund in the name of the Eligible Aggrieved Employee.”].)

5) **Attorney’s Fees and Costs Are Reasonable:** Plaintiff’s counsel’s attorney fees and costs are reasonable based on her counsel’s experience and expertise in wage and hour matters. (Lebe Decl., ¶¶ 3-8.)

1 6) **Tax Treatment:** Aggrieved Employees unpaid wages will be taxed customarily
2 as wages and shall be reported by W-2 forms and penalties and interest shall be reported by IRS
3 1099 forms. (Lebe Decl., ¶ 17, Exhibit 1, Section III(G)(2) [“The amounts paid as wages shall be
4 subject to all tax withholdings customarily made from an employee’s wages and all other
5 authorized and required withholdings and shall be reported by W-2 forms. The amounts paid as
6 penalties and interest shall be subject to all authorized and required withholdings other than the
7 tax withholdings customarily made from employees’ wages and shall be reported by IRS 1099
8 forms. The employees’ share of payroll tax withholdings shall be withheld from each persons’
9 Individual Settlement Share.”].) Plaintiff’s enhancement payment shall not be taxed as wages.
10 (Lebe Decl., ¶ 17, Exhibit 1, Section III(H)(1) [“Payroll tax withholdings and deductions will not
11 be taken from the Class Representative Enhancement Payments. An IRS Form 1099 will be issued
12 to Plaintiff with respect to her Class Representative Enhancement Payments.”].)

13 7) **Disposition of Unclaimed Funds:** Aggrieved Employees will have one hundred
14 eighty (180) days to cash or deposit their checks, or else his or her amount will be paid to the State
15 Department of Industrial Relations of Unpaid Wages Fund. (Lebe Decl., ¶ 17, Exhibit 1, Section
16 III(G)(2) (K)(10) [“Participating Class Members must cash or deposit their Individual Settlement
17 Share checks within one hundred eighty (180) calendar days after the checks are mailed to them.
18 If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the
19 Settlement Administrator will conduct a skip trace and send a reminder postcard indicating that
20 unless the check is redeemed or deposited in the next ninety (90) calendar days, it will expire and
21 become non-negotiable, and offer to replace the check if it was lost or misplaced. If any checks
22 remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder
23 notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks
24 are mailed, cancel the checks, and pay the amount of the Individual Settlement Share to the state
25 Department of Industrial Relations Unpaid Wages Fund in the name of the Class Member/Eligible
26 Aggrieved Employee.”].)

8) **Settlement Submitted to the Labor and Workforce Development Agency (“LWDA”):** On July 13, 2021, the proposed settlement was submitted to the LWDA. (Lebe Decl., ¶ 21.)

9) **Court Retains Jurisdiction:** The proposed settlement includes a provision that the Court will retain jurisdiction to enforce the settlement pursuant to Code of Civil Procedure Section 664.6. (Lebe Decl., ¶ 17, Exhibit 1, Section III(N)(16) [“Pursuant to Code of Civil Procedure Section 664.6, the Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Superior Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.”].)

10) **Notice Content:** The notice to Aggrieved Employees provides (1) scope of the released claims and (2) his or her responsibility for any taxes payable on the amount received. (Lebe Decl., ¶ 17, Exhibit A, pg. 3, Section 7; pg. 6, Section 11.)

11) **Releases:** The proposed settlement has a release that only releases civil penalties available under PAGA by reason of the facts alleged in the operative complaint. (Lebe Decl., ¶ 17, Exhibit 1, Section III(M) [“As of the Effective Final Settlement Date, this settlement forever bars Plaintiff, the LWDA, and any other representative, proxy, or agent thereof, including, but not limited to, any and all Eligible Aggrieved Employees during the PAGA Period, from pursuing any action under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2698, *et seq.*, against, the Released Parties based on or arising out of alleged violations of Labor Code sections alleged in the Case.”].)

Dated: July 14, 2021

Lebe Law, APLC

By:



Jonathan M. Lebe

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