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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

MOTION FOR FINAL APPROVAL

**PLAINTIFF MELINDA JAMES' REPORT
RE: COMPLIANCE WITH PROCEDURAL
GUIDELINES FOR FINAL APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENTS**

[Motion, Declaration of Jonathan M. Lebe,
Declaration of Melinda James, and [Proposed]
Order and Judgment Filed Herewith]

Hearing Information:

Date: March 24, 2022

Time: 2:00 p.m.

Location: Dept. CX-102

1 Plaintiff Melinda James (“Plaintiff”) respectfully submits that the proposed settlement is
2 in compliance with the Court’s guidelines for final approval of class actions and PAGA
3 settlements, as detailed below:

4 **Procedural Guidelines for Final Approval of Class Action Settlements:**

5 1) Since the date and place of final approval hearings are set by the preliminary
6 approval order, notice of which is typically included in the notice to class members of the
7 settlement itself (California Rules of Court [“CRC”] 3.769(e) & (f)), the final approval hearing is
8 outside the scope of Code of Civil Procedure §1005. Nevertheless, settling parties should caption
9 their papers submitted in support of final approval as a “Motion for Final Approval,” and set the
10 matter for hearing on the reserved date.

11 Plaintiff’s supporting papers submitted with the motion for final approval have the caption
12 “Motion for Final Approval.”

13 2) With rare exceptions, the court will expect all issues related to final approval to be
14 heard at the same time, including, without limitation, (a) final approval of the settlement itself, (b)
15 approval of any attorney’s fees request, (c) approval of incentive awards to class representatives,
16 and (d) approval of expense reimbursements and costs of administration. If the settling parties elect
17 to file separate motions for any of these categories, the motions must be set on the same day.

18 Plaintiff has included final approval of the settlement, approval of attorney’s fees, approval
19 of incentive award to class representative and approval of expenses reimbursements and costs of
20 administration in the same motion before the Court on the same day.

21 3) All requests for approval of attorney’s fees awards, whether included in a Motion
22 for Final Approval or made by way of a separate motion, must include detailed lodestar
23 information, even if the requested amount is based on a percentage of the settlement fund. The
24 court generally finds the declarations of class counsel as to hours spent on various categories of
25 activities related to the action, together with hourly billing-rate information, to be sufficient,
26 provided it is adequately detailed. It is generally not necessary to submit copies of billing records
27 themselves with the moving papers, but counsel should be prepared to submit such records at the
28 court’s request.

1 Plaintiff's counsel must disclose whether they have any fee-splitting arrangement with any
2 other counsel or confirm none exists. (*Barnes, Crosby, Fitzgerald & Zeman, LLP v. Ringler* (2012)
3 212 Cal.App.4th 172, 184; California Rules of Court, rule 3.769(b).)

4 A loadstar analysis is included in the motion for final approval. (Motion, pgs. 8-11.) A
5 breakdown of the hours spent litigating this matter is included in the Declaration of Jonathan M.
6 Lebe filed concurrently with the motion. (Declaration of Jonathan M. Lebe ["Lebe Decl."], ¶ 26-
7 28.) Only Lebe Law served as class counsel firm and there is no fee-splitting arrangement with
8 any other counsel. (Lebe Decl., ¶ 25.)

9 4) Requests for approval of enhancement/incentive payments to class representatives
10 must include evidentiary support consistent with the parameters outlined in *Clark v. American*
11 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.

12 Plaintiff's declaration explaining why her enhancement payment is reasonable and her
13 work in this matter is filed concurrently with this motion. (See Declaration of Melinda James.)

14 5) For all settlements that include a distribution to settlement class members, a final
15 compliance hearing must be set, which requires the submission and approval of a final compliance
16 status report after completion of the distribution process. The compliance hearing will be set when
17 final approval is granted, so the moving papers should include a suggested range of dates for this
18 purpose. The compliance status report must be filed at least 5 court days prior to the compliance
19 hearing.

20 A proposed compliance hearing is included in the proposed order and judgment.

21 6) In light of the requirements of CRC 3.769(h), all final approvals must result in the
22 entry of judgment, and the words "dismissal" and "dismissed" should be avoided not only in
23 proposed orders and judgments, but also in settlement agreements.

24 A proposed judgment is filed concurrently with this motion and the words "dismissal" and
25 "dismissed" are not used in the proposed order and judgment.

26 7) To ensure appropriate handling by the court clerk, the court prefers the use of a
27 combined "order and judgment," clearly captioned as such (e.g. "Order of Final Approval and
28 Judgment" or "Order and Judgment of Final Approval"). The body of the proposed order and

judgment must also incorporate the appropriate “judgment is hereby entered” language, and otherwise fully comply with California Rule of Court (“CRC”) 3.769(h), including express reference to that rule as the authority for the court’s continuing jurisdiction. The proposed order and judgment should also include the compliance hearing provision (with suggested date and time) discussed above.

The proposed order and judgment is clearly captioned and incorporates the appropriate “judgment is hereby entered” language and fully complies with California Rule of Court (“CRC”) 3.769(h). The proposed order and judgment also includes a proposed compliance hearing.

8) If the actions that are being settled are included in a Judicial Council Coordinated Proceedings (“JCCP”), termination of each included action by entry of judgment is subject to CRC 3.545(b) & (c), and proposed orders and judgments must so reflect. Language must also be included to the effect that compliance with CRC 3.545(b)(1 & 2) shall be undertaken by class counsel, and that a declaration shall be filed confirming such compliance.

Not applicable.

9) All proposed orders and judgments should include all the requisite “recital,” “finding,” “order” and “judgment” language in a manner that clarifies the distinctions between these elements, and care must be taken that all terms that require definition are either defined in the proposed order and judgment itself or that definitions found elsewhere in the record are clearly incorporated by reference. No proposed order and judgment should be submitted until after review by counsel for each settling party.

The proposed order and judgment includes the requisite “recital,” “finding,” “order” and “judgment” language in a manner that clarifies the distinctions between these elements.

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

1) A comprehensive definition of the group of allegedly aggrieved employees represented by plaintiff in the action.

The PAGA Settlement has a comprehensive definition of the group of allegedly aggrieved employees represented in this action. (Lebe Decl., ¶ 15, Exhibit 1, Section I(R) [“The aggrieved employees eligible to recover the PAGA payment shall consist of all individuals employed as non-

1 exempt hourly workers by Defendant within the State of California from April 6, 2019 through
2 April 1, 2021 ('PAGA Period')"].)

3 2) A definition of the PAGA claims encompassed by the settlement, premised on the
4 allegations of the operative complaint.

5 The PAGA claims are based on Defendant's violations of the Labor Code. (Lebe Decl., ¶
6 15, Exhibit 1, Section II(A) "Per the Complaint, the Plaintiff alleges, *inter alia*, on behalf of herself,
7 all others similarly situated, and other aggrieved employees, that Defendant violated California
8 state wage and hour laws and the California *Business and Professions Code* section 17200 *et seq.*
9 and PAGA as a result of Defendant's wage and hour policies and practices. Specifically, Plaintiff
10 alleges that Defendant failed to pay all wages, including minimum wages, regular wages, overtime
11 and double time; failed to properly calculate overtime and double time wages; failed to provide
12 meal breaks (including without limitation first and second meal breaks) each day based on the
13 hours worked by each employee, including meal breaks that were short, late, interrupted, and/or
14 missed altogether; failed to authorize and permit legally compliant rest breaks each day based on
15 the hours worked by each employee, including rest breaks that were short, late, interrupted, and/or
16 missed altogether; failed to both pay for reporting time pay and to pay for reporting time at the
17 legally required rate; failed to both pay for on-call time and to pay on-call time at the legally
18 required rate; and failed to timely pay all wages during employment each pay period for every
19 employee. Plaintiff further alleged that the aforementioned resulted in the Class receiving
20 inaccurate wage statements; the underpayment of wages to employees upon termination and/or
21 resignation; unfair business practices; and a violation of PAGA."].)

22 3) The total consideration being provided by defendant(s) for the settlement ("gross
23 settlement amount"), and a description of each allocation of the consideration, such that all of the
24 total consideration is accounted for.

25 The Gross Settlement Amount is as follows:

26 a. **Consideration Received by Plaintiff:** Plaintiff will receive an individual
27 settlement payment of \$20,000 to settle her individual claims. (Lebe Decl., ¶ 15, Exhibit 1, Section
28 II(V) ["The payment by Defendant to Plaintiff in accordance with the separate individual

1 settlement agreement entered into between the Parties totaling \$20,000 regarding her claims of
2 retaliation, wrongful termination, and other related claims.”].)

3 **b. Consideration Received by Aggrieved Employees:** Aggrieved
4 Employees will receive a proportional share of the PAGA Payment and if also a class member,
5 will receive a proportional share of the Net Settlement Amount. (Lebe Decl., ¶ 15, Exhibit 1,
6 Section III(H)(6) [“The Settlement Administrator shall pay each Eligible Aggrieved Employee
7 according to their proportional share, which will be based upon the total number of pay periods he
8 or she was employed during the PAGA Period. The individual share will be calculated by
9 determining the total number of pay periods the Eligible Aggrieved Employees were employed
10 during the PAGA Period (i.e., the sum of all pay periods of employment for each eligible aggrieved
11 employee), and dividing that number into the \$6,250 amount allocated to Eligible Aggrieved
12 Employees to determine the monetary value assigned to each pay period. That number will then
13 be multiplied by the individual eligible aggrieved employee’s total number of pay periods
14 employed during the PAGA Period to determine that individual’s proportional share. Settlement
15 checks issued to the Eligible Aggrieved Employees pursuant to this Joint Stipulation and
16 Settlement Agreement shall expire 180 days from the date they are issued by Defendant. Any
17 unclaimed funds after the 180 days shall be turned over by the Settlement Administrator, with
18 information for each Eligible Aggrieved Employee who failed to timely cash his/her settlement
19 check, to the state Department of Industrial Relations Unpaid Wages Fund in the name of the
20 Eligible Aggrieved Employee.”]; Lebe Decl., ¶ 15, Exhibit 1, Section III(G)(1)(a) [“Each
21 Participating Class Member will receive a proportionate share of the Net Settlement Amount that
22 is equal to (i) the number of weeks he or she worked during the Class Period based on the Class
23 data provided by Defendant, divided by (ii) the total number of weeks worked by any and all
24 Participating Class Members collectively, during the Class Period based on the same Class data,
25 which is then multiplied by the Net Settlement Amount. One day worked in a given week will be
26 credited as a week for purposes of this calculation. Therefore, the value of each Participating Class
27 Member’s Individual Settlement Share ties directly to the amount of weeks that he or she
28 worked.”].)

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

d. **Attorney’s Fees, Attorney’s Costs, and Administration Costs:** The proposed settlement provides for attorney’s fees up to \$175,833.33 (for prosecution of both class and PAGA claims). (Lebe Decl., ¶ 15.) The proposed settlement provides for attorney’s costs up to \$15,000. (*Id.*) The proposed settlement provides for administration costs up to \$15,000. (*Id.*)

e. **Plaintiff’s Enhancement:** The proposed settlement provides for a \$5,000 enhancement award to Plaintiff (for acting as both a PAGA and class representative). (Lebe Decl., ¶ 15.)

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., ¶ 15, 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) An explanation as to how the amount payable to each purported aggrieved employee is to be calculated.

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., ¶ 57, 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) An explanation as to why the attorneys' fees and costs sought are reasonable within the meaning of Labor Code section 2699 (g) (1).

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., ¶¶ 3-9; 25-29.)

6) A description of the tax treatment for any of the payments to plaintiff and/or aggrieved employees.

Aggrieved Employees unpaid wages will be taxed customarily as wages and shall be reported by W-2 forms and penalties and interest shall be reported by IRS 1099 forms. (Lebe Decl., ¶ 15, Exhibit 1, Section III(G)(2) ["The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. The employees' share of payroll tax withholdings shall be withheld from each persons' Individual Settlement Share."].) Plaintiff's enhancement payment shall not be taxed as wages. (Lebe Decl., ¶ 15, Exhibit 1, Section III(H)(1) ["Payroll tax withholdings and deductions will not be taken from the Class

Representative Enhancement Payments. An IRS Form 1099 will be issued to Plaintiff with respect to her Class Representative Enhancement Payments.”].)

7) A provision setting forth the disposition of unclaimed funds, i.e., checks uncashed within a stated period of time after being sent to aggrieved employees.

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

8) A provision that the proposed settlement be submitted to the Labor and Workforce Development Agency at the same time that it is submitted to the court. (Labor Code section 2699(1)(2)).

On November 3, 2021, the second revised settlement was submitted to the LWDA. (Lebe Decl., ¶ 19.)

9) A provision that the Court will retain jurisdiction to enforce the settlement pursuant to CCP section 664.6.

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., ¶ 15, 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

1 of this Agreement and all orders and judgment entered in connection therewith, and the Parties
2 and their counsel hereto submit to the jurisdiction of the Superior Court for purposes of
3 interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all
4 orders and judgments in connection therewith.”].)

5 10) A notice to aggrieved employees that will accompany the payment to them. A copy
6 of such notice is to be provided to the court for approval along with the motion seeking approval
7 of the settlement. The notice must inform the recipient as to the scope of the released claims, and
8 as to the recipient’s responsibility for any taxes payable on the amount received.

9 The notice mailed to Eligible Aggrieved Employees on January 25, 2022 provided the
10 scope of the released claims and his or her responsibility for any taxes payable on the amount
11 received. (Lebe Decl., ¶ 15, Exhibit A, pg. 3, Section 7; pg. 6, Section 11.)

12 11) Releases that do not include Civil Code section 1542 releases for aggrieved
13 employees other than plaintiff.

14 Only Plaintiff has provided a Civil Code section 1542 general release.

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12) Releases that release, for aggrieved employees other than plaintiff, no more than the civil penalties available under PAGA by reason of the facts alleged in the operative complaint.

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., ¶ 15, 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: March 2, 2022

Lebe Law, APLC

By:



Jonathan M. Lebe
Annaliz Loera

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