

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

Melinda James, individually and on behalf of all
similarly situated,

Plaintiff,

v.

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

Defendants.

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

**AMENDED [PROPOSED] ORDER
GRANTING PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT AND
SETTING A FINAL APPROVAL HEARING**

Assigned to the Honorable Peter Wilson
Dept.: CX-102

Complaint Filed: October 1, 2020

RECITALS

On October 1, 2020, Plaintiff Melinda James (Plaintiff), a former employee of Defendant Coolsys Commercial & Industrial Solutions, Inc., formerly known as Source Refrigeration & HVAC, Inc. ("Coolsys"), filed a representative Private Attorneys General Act ("PAGA") complaint against Coolsys and Coolsys, Inc. ("Defendants").

On November 5, 2020, Defendant Coolsys filed an answer, asserting various affirmative defenses.

On January 26, 2021, the Parties participated in a full-day mediation before mediator Gig Kyriacou, a very experienced mediator of wage and hour class actions. In advance of the mediation, the Parties engaged in informal discovery, whereby Defendants provided the following information

1 related to Defendant Coolsys' employees: (1) the number of aggrieved employees; (2) the number of
2 former employees (3) workweeks worked; (4) the number of pay periods; (5) company handbook and
3 policies pertaining to wage and hour issues; and (6) a sample of time and payroll records. No settlement
4 resulted at the mediation session, but rather a mediator's proposal was issued and left open through on
5 February 5, 2201. The Parties accepted the mediator's proposal subject to the approval of the Court
6 and finalization of a Settlement Agreement and amended complaint alleging class action allegations.
7 Plaintiff originally brought this action as a PAGA representative due to a purported arbitration
8 agreement but agreed to amend her complaint to assert class action claims for settlement purposes.

9 In advance of the hearing date of Plaintiff's Motion for Preliminary Approval of Class Action
10 Settlement ("Motion"), Plaintiff filed a joint stipulation for filing of an amended complaint to assert
11 wage and hour violations on behalf of the proposed class to expand the case from a PAGA only case
12 to a hybrid class and PAGA action. Plaintiff sought leave to amend the complaint to allege the
13 following causes of action for the class: (1) Violations of Labor Code §§ 1194, 1197.1 and the
14 Applicable Wage Order for Failure to Pay All Minimum Wages; (2) Violations of Labor Code §§ 510,
15 1194, 1198 and the Applicable Wage Order for Failure to Pay All Overtime Wages; (3) Violations of
16 Labor Code §§ 204, 210 and the Applicable Wage Order for Failure to Pay All Wages; (4) Violations
17 of the Applicable Wage Order for Failure to Pay Reporting Time Pay; (5) Violations of Labor Code §§
18 226.7, 512 and the Applicable Wage Order for Failure to Provide Timely and Compliant Meal Periods;
19 (6) Violations of Labor Code §§ 226.7 and the Applicable Wage Order for Failure to Provide Timely
20 and Compliant Rest Periods; (7) Violations of Labor Code §§ 226(a), 226.3 and the Applicable Wage
21 Order for Failure to Provide Accurate and Itemized Wage Statements; (8) Violations of Labor Code §§
22 201-203 for Failure to Timely Pay All Wages Due to Terminated/Separated Employees; (9) violation
23 of Business and Professions Code §§ 17200, *et seq.*; and (10) Violation Of Private Attorney General
24 Act (Cal. Lab. Code § 2698, *Et. Seq.*)

25 Plaintiff's Motion was filed with the Court on July 14, 2021, a copy of the Motion sent to the
26 LWDA on August 20, 2021 and a hearing was held before this Court on October 7, 2021 at 2:00 p.m.
27 Appearing at the hearing were Jonathan Lebe and Annaliz Loera of Lebe Law, APLC, for Plaintiff and
28 as Proposed Class Counsel for the Class, and Christine D. Baran and Ashton M. Riley of Fisher &

1 Phillips LLP for Defendants.

2 The Court has considered the moving and supporting papers, Stipulation, and all other papers
3 filed in this Litigation.

4 **FINDINGS AND ORDERS**

5 **NOW THEREFORE, IT IS HEREBY FOUND AND ORDERED:**

6 1. All defined terms contained herein shall have the same meanings as set forth in the Joint
7 Stipulation and Agreement (“Stipulation”), which is attached as **Exhibit 1**.

8 2. The Class Representative and Defendants, through their counsel of record in the Litigation,
9 has reached an agreement to settle the Litigation on behalf of the Class as a whole;

10 3. The Court hereby conditionally certifies the following Class for settlement purposes only:

11 The Class: All individuals employed as non-exempt hourly workers by
12 Defendant Coolsys within the State of California from October 1, 2016 through
April 1, 2021.

13 Should for whatever reason the Stipulation and Judgment not become a final Judgment, the fact
14 that the Parties were willing to stipulate to certification of a class as part of the Stipulation shall have
15 no bearing on, or be admissible in connection with, the Litigation or the issue of whether a class should
16 be certified in the Litigation in a non-settlement context.

17 4. The Court hereby approves the following Eligible Aggrieved Employees for settlement
18 purposes only:

19 Eligible Aggrieved Employees: All individuals employed as non-exempt hourly workers
20 by Defendant Coolsys within the State of California from April 6, 2019 through April 1,
2021 (“PAGA Period”).

21 5. The Court appoints and designates: (a) Plaintiff Melinda James as the Class Representative
22 and (b) Jonathan Lebe and Annaliz Loera of Lebe Law, APLC as Class Counsel for the Class. Class
23 Counsel is authorized to act on behalf of the Class with respect to all acts or consents required by, or
24 which may be given, pursuant to the Stipulation, and such other acts reasonably necessary to finalize
25 the Stipulation and its terms. Any Class Member may enter an appearance through his or her own
26 counsel at such Class Member’s own expense. Any Class Member who does not enter an appearance
27 or appear on his or her own behalf will be represented by Class Counsel.

1 6. The Court hereby preliminary approves the terms and conditions provided for in the
2 Stipulation.

3 7. The Court hereby preliminarily approves the Stipulation, the total Gross Settlement
4 Amount in the amount of \$527,500, and the allocations of the following amounts from the total Gross
5 Settlement Amount, (a) \$5,000 for the Class Representative for her services to the Class; (b) a total of
6 \$175,833.33 to Class Counsel for attorneys' fees and a total of up to \$15,000 for reimbursement of
7 Class Counsel's actual litigation costs and expenses incurred; (c) \$25,000 for penalties pursuant to the
8 Private Attorney General Act, California Labor Code sections 2698, *et seq.*, of which \$18,750 shall be
9 paid to the Labor and Workforce Development Agency and \$6,250 shall remain a part of the Net
10 Settlement Amount; and (d) payment to the Settlement Administrator for the Settlement
11 Administration Costs, which are expected not to exceed \$15,000. The Court further hereby
12 preliminarily approves the Net Settlement Amount and the Individual Settlement Amount provided in
13 the Stipulation.

14 8. The Court finds on a preliminary basis that the Stipulation appears to be within the range
15 of reasonableness of a settlement, including the amount of the PAGA penalties, Class Representative
16 Service Award, Class Counsel's attorneys' fees and costs, the Settlement Administration Costs, and the
17 allocation of payments to the Settlement Class Members, that could ultimately be given final approval
18 by this Court. It appears to the Court on a preliminary basis that the Stipulation is fair, adequate, and
19 reasonable as to all potential Class Members when balanced against the probable outcome of further
20 litigation relating to liability and damages issues. It also appears that extensive and costly
21 investigation, research, and mediation proceedings have been conducted so that counsel for the Settling
22 Parties are able to reasonably evaluate their respective positions. It appears to the Court that settlement
23 at this time will avoid substantial additional costs by all Settling Parties, as well as avoid the delay and
24 risks that would be presented by the further prosecution of the Litigation. It also appears that the
25 Stipulation has been reached as a result of intensive, serious, and non-collusive arms-length
26 negotiations.

27 9. The "Final Approval Hearing" shall be held before this Court on February 3, 2022 at 2:00
28 pm in Department CX-102 of the Superior Court of the State of California, County of Orange to

1 determine all necessary matters concerning the Stipulation, including whether the proposed settlement
2 of the Litigation on the terms and conditions provided for in the Stipulation is fair, adequate and
3 reasonable and should be finally approved by the Court and whether a Judgment, as provided in the
4 Stipulation, should be entered herein. At this same time, a hearing on Class Counsel's motion for an
5 award of attorneys' fees, reimbursement of litigation costs, and the Class Representative Enhancement
6 Award shall also be held.

7 10. The Court hereby approves, as to form and content, the Notice of Proposed Class Action
8 Settlement ("Class Notice"), which is attached to the Stipulation as **Exhibit A**, to be sent to the Class
9 Members. The Court finds that distribution of the Class Notice to Class Members substantially in the
10 manner and form set forth in the Stipulation and this Class Notice meets the requirements of due
11 process and shall constitute due and sufficient notice to all parties entitled thereto.

12 11. The Court appoints and designates CPT Group, Inc. as the Settlement Administrator. The
13 Court hereby directs the Settlement Administrator to provide the approved Class Notice to the Class
14 Members within thirty-five (35) calendar days of this Preliminary Approval Order, in conformity with
15 the Stipulation.

16 12. Any Class Member may choose to opt out of, and be excluded from, the settlement as
17 provided in the Stipulation, by following the instructions set forth in the Class Notice, for requesting
18 exclusion. Any person who timely and properly opts out of the Stipulation will not be bound by the
19 Stipulation or have any right to object, appeal, or comment thereon. Any Opt-Out request must be in
20 writing, clearly state that the Class Member wishes to be excluded from the settlement of the
21 Litigation and be signed by each such Class Member opting out, and must otherwise comply with the
22 requirements delineated in the Stipulation and Class Notice. Class Members who have not requested
23 exclusion by submitting a proper and timely Opt-Out request that is postmarked no later than the Opt-
24 Out Deadline, shall be bound by all determinations of the Court, the Settlement, and Judgment.
25 Plaintiff is required to provide all disputes, objections, and exclusions to the Court at the Final
26 Approval Hearing.

27 13. The Motion for Final Approval shall be filed no later than sixteen (16) court days before
28 the Final Approval Hearing.

14. In the event that the Effective Date occurs, all Settlement Class Members and the Class Representative will be deemed to have forever released and discharged the Released Claims applicable to them as against Defendants. The Class Representative additionally will be deemed to have waived her rights under California Civil Code section 1542 as against Defendants.

15. Eligible Aggrieved Employees will be unable to opt out of the PAGA portion of the Settlement. Even Eligible Aggrieved Employees who opt out of the class action portion will still be a part of the PAGA settlement.

16. In the event that the Effective Date occurs, all Eligible Aggrieved Employees and the Class Representative will be deemed to have forever released and discharged the Released Claims applicable to them against Defendants under PAGA based on or arising out of the alleged violations of the Labor Code sections as alleged in this case.

17. In the event that the Effective Date occurs, the action captioned as, *Melinda James v. Coolsys Commercial & Industrial Solutions, Inc., et al.*, Orange County Superior Court Case No. 30-2020-01163014-CU-OE-CVC, shall be resolved pursuant to the terms of the Stipulation by entry of Judgment.

18. The calendar of events leading to the Final Approval Hearing shall be as follows:

Date/ Triggering Event:	Event
The date of this Preliminary Approval Order ("PAO")	Court orders preliminary approval of Settlement and conditional certification of class, and Defendants shall provide the Settlement Administrator with the Class Members' contact information.
Within 35 days of PAO	Settlement Administrator to mail Class Notices.
Within 45 days of Class Notice mailing (10-day extension for remailed and forwarded Class Notice)	Deadline for Class Members to submit Requests for Exclusion (Opt Out), or Objections to the Settlement.

January 7, 2022	Deadline for filing: (1) Motion for Final Approval (2) Application for Attorney's Fees, Costs, and Expenses, and (3) Application for Class Representative Service Award.
January 27, 2022	Deadline to File a Response to Any Objections and to file the Declaration of Settlement Administrator.
February 3, 2022	Final Approval Hearing

19. The Court reserves the right to adjourn or continue the date of the Final Approval Hearing and all dates provided for in the Stipulation without further notice to the Class and retains jurisdiction to consider all further applications arising out of or connected with the Stipulation.

IT IS SO ORDERED.

DATED: _____
Honorable Peter Wilson
Judge of the Superior Court

Exhibit 1

JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to final approval by the Court, this Settlement Agreement is between Plaintiff Melinda James (“Plaintiff”) on behalf of herself and others similarly situated and other aggrieved employees and Defendants Coolsys Commercial & Industrial Solutions, Inc., formerly known as Source Refrigeration & HVAC, Inc. and Coolsys, Inc. (“Defendants”). Plaintiff and Defendants collectively are referred to in this Agreement as the “Parties.”

I. DEFINITIONS

In addition to the other terms defined in this Agreement, the terms below have the following meaning:

- A. **Administration Costs:** All administrative costs incurred by the Settlement Administrator to administer this Settlement including the cost of notice to the Class members, claims administration, and any fees and costs incurred or charged by the Settlement Administrator in connection with the execution of its duties under this Joint Stipulation and Settlement Agreement, which is currently estimated at \$11,500 and shall not exceed \$15,000. All Administration Costs shall be paid from the Qualified Settlement Fund. Funds allocated but not paid to the Settlement Administrator will be distributed to the class pro rata.
- B. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement:** The settlement agreement reflected in this document, entitled “Joint Stipulation and Settlement Agreement.”
- C. **Attorney Fee Award:** The amount, not to exceed 33 1/3% of the Gross Settlement Amount or \$175,833.33, finally approved by the Court and awarded to Class Counsel. The Attorney Fee Award shall be paid from the Qualified Settlement Fund and will not be opposed by Defendants.
- D. **Case or Class Action:** The lawsuit filed by Plaintiff on October 1, 2020, entitled *Melinda James, et al. v. Coolsys Commercial & Industrial Solutions, Inc., et al.*, Case No. 30-2020-01163014-CU-OE-CXC in the State of California, Orange County Superior Court.
- E. **Class:** All individuals employed as non-exempt hourly workers by Defendant Coolsys Commercial & Industrial Solutions, Inc., formerly known as Source Refrigeration & HVAC, Inc. within the State of California during the Class Period. Coolsys, Inc. has no employees.
- F. **Class Counsel:** Jonathan Lebe and Annaliz Loera of Lebe Law, APLC.

- G. Class Member:** Each person eligible to participate in this Settlement who is a member of the Class as defined above.
- H. Class Notice or Notice:** The “Notice of Class Action Settlement” or “Notice” shall mean the notice to be provided to all Class Members regarding the terms of this Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval. The Notice shall be provided to all Class Members in both English and Spanish. The Notice shall constitute class notice pursuant to California Rule of Court 3.769 (f) and, once approved by the Court shall be deemed compliant with California Rule of Court 3.766.
- I. Class Period:** The time period from October 1, 2016, through April 1, 2021.
- J. Class Representative or Plaintiff:** Melinda James (“James”).
- K. Class Representative Enhancement Payments:** The amount the Court awards to Plaintiff for her services as Class Representatives, which will not exceed \$5,000. This payment shall be paid from the Qualified Settlement Fund and will not be opposed by Defendants. This enhancement payment is subject to approval of the Court. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- L. Complaint:** The complaint filed by Plaintiff October 1, 2020, in the case entitled *Melinda James, et al. v. Coolsys Commercial & Industrial Solutions, Inc., et al.*, Case No. 30-2020-01163014-CU-OE-CXC in the State of California, Orange County Superior Court. In conjunction with the Preliminary Approval Motion, Plaintiff will file a First Amended Complaint, attached hereto as **Exhibit B**. Plaintiff’s First Amended Complaint will add causes of action brought on behalf of the Class. The First Amended Complaint will be filed for settlement purposes only. Should the Settlement not become Final for whatever reason, the First Amended Complaint will be deemed stricken and Parties will revert back to their positions prior to settlement.
- M. Cost Award:** The amount that the Court orders Defendants to pay Class Counsel for payment of actual litigation costs, which shall not exceed \$15,000. The Cost Award will be paid from the Qualified Settlement Fund and will not be opposed by Defendants. The Cost Award is subject to Court approval. If the Court awards less than the amount request, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- N. Counsel for Defendants:** Attorneys Christine D. Baran and Ashton M. Riley of Fisher & Phillips LLP.
- O. Court:** The State of California, Orange County Superior Court.

- P. Defendants:** Coolsys Commercial & Industrial Solutions, Inc., formerly known as Source Refrigeration & HVAC, Inc. and Coolsys, Inc.
- Q. Effective Final Settlement Date:** The effective date of this Settlement or Final Settlement Date shall be the earlier of the following dates: (1) the date of final affirmation of the Final Approval from any appeal, the expiration of the time for, or the denial of, a petition to review the Final Approval, or if review is granted, the date of final affirmation of the Final Approval following review pursuant to that grant; or (2) the date of final dismissal of any appeal from the Final Approval or the final dismissal of any proceeding to review the Final Approval, provided that the Final Approval is affirmed and/or not reversed in any part; or (3) if no class members intervene but objections are filed, the expiration date of the time for the filing or noticing of any appeal from the Court's Final Approval of the Settlement, as determined under Rule 8.104(a)(3) of the California Rules of Court or (4) if no class members intervene and there are no objections, the date the Court enters the Final Approval Order and Final Judgment.
- R. Eligible Aggrieved Employees:** The aggrieved employees eligible to recover the PAGA payment shall consist of all individuals employed as non-exempt hourly workers by Defendant Coolsys Commercial & Industrial Solutions, Inc., formerly known as Source Refrigeration & HVAC, Inc. within the State of California from April 6, 2019 through April 1, 2021 ("PAGA Period").
- S. Exclusion Form:** The Election Not To Participate or Opt-out Form, substantially similar to the form attached hereto as **Exhibit C**, subject to Court approval.
- T. Judgment or Final Approval:** The "Final Approval Order" means the final order entered by the Court following the Final Fairness and Approval Hearing. The "Final Judgment" means the final judgment entered by the Court following the Final Fairness and Approval Hearing.
- U. Gross Settlement Amount or GSA:** The total value of the Settlement is a non-reversionary Five Hundred, Twenty-Seven Thousand, Five Hundred Dollars and Zero Cents (\$527,500.00). This is the gross amount Defendants can be required to pay under this Settlement Agreement, which includes without limitation: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (4) Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and to Participating Class Members, as approved by the Court. Defendant Coolsys Commercial & Industrial Solutions, Inc., formerly known as Source Refrigeration & HVAC, Inc.'s portion of payroll taxes as the

Class Members' current or former employer is excluded from the GSA and will be paid by Defendant Coolsys Commercial & Industrial Solutions, Inc., formerly known as Source Refrigeration & HVAC, Inc. separately. No portion of the Gross Settlement Amount will revert to Defendants for any reason. This amount is all-inclusive of all payments contemplated in this resolution, excluding the Individual Settlement Payment to Plaintiff as provided for in this Agreement, and excluding any employer-side payroll taxes on the portion of the Settlement Shares, if any are allocated to wages

- V. **Individual Settlement Payment:** The payment by Defendants 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.
- W. **Individual Settlement Share(s):** The amount payable to each Participating Class Member under the terms of this Settlement Agreement. Class Members are not required to submit a claim form to receive their Individual Settlement Shares pursuant to this Agreement. Rather, Participating Class Members will receive an Individual Settlement Share automatically, without the return of a claim form.
- X. **LWDA:** California Labor and Workforce Development Agency.
- Y. **Net Settlement Amount or NSA:** 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.
- Z. **PAGA:** The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).
- AA. **PAGA Payment:** 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, as set forth below.
- BB. **Participating Class Members:** All Class Members who do not submit a valid and timely request to exclude themselves from this Settlement.

CC. Parties: Plaintiff Melinda James as an individual and as Class Representative, and Defendant Coolsys Commercial & Industrial Solutions, Inc., formerly known as Source Refrigeration & HVAC, Inc.

DD. Preliminary Approval or Preliminary Approval Order: The order entered by the Court following the Preliminary Approval Hearing approving the proposed Settlement.

EE. Qualified Settlement Fund or QSF: A fund within the meaning of Treasury Regulation § 1.46B-1, 26 C.F.R. § 1.468B-1 et seq., that is established by the Settlement Administrator for the benefit of Participating Class Members, Plaintiff and Class Counsel.

FF. Released Claims: Upon Defendants' fulfillment of its payment obligations under Section III (K)(9)(a) below, the claims that Plaintiff and the other Participating Class Members are releasing in exchange for the consideration provided for by this Agreement are all claims asserted in the operative complaint, that arise out of the facts asserted in the operative complaint, or that could have been asserted in the operative complaint, including for unpaid wages, including minimum wages, regular wages, overtime and double time, improper calculation of overtime and double time wages, meal and rest breaks, reporting time pay, on-call pay, failure to timely pay wages during employment, separation pay violations, non-compliant wage statements, failure to properly record hours worked and/or paid, unfair business practices, and PAGA.

GG. Comprehensive Release: Upon Defendants' fulfillment of its payment obligations under Section II (k)(9) below and the individual settlement agreement, Plaintiff is releasing in exchange for the consideration provided for by this Agreement a comprehensive release of all known and unknown claims by Plaintiff, including a California Civil Code section 1542 waiver arising out of the operative allegations in the Case.

HH. Released Parties: Defendants, and their respective subsidiaries, affiliates, officers, directors, shareholders, employees, attorneys, agents, assigns, members, investors, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, parents and attorneys.

II. Response Deadline: Forty-five (45) calendar days from the initial mailing of the Notice.

JJ. Settlement Administration: The Settlement Administrator will conduct a skip trace for the address of all former employee Class Members. The Settlement Administrator will translate into Spanish and mail the Notice in English and Spanish version by first class U.S. mail to all Class Members at the address Defendant Coolsys Commercial & Industrial Solutions, Inc., formerly known as Source Refrigeration & HVAC, Inc. has on file for those Class Members and

to all former employee Class Members at the address resulting from the skip trace. The Notice will inform Class Members that they have until the Response Deadline to either object to the Settlement or to opt-out (exclude themselves) from the Settlement. Any Class Member who does not receive Notice after the steps outlined above have been taken will still be bound by the Settlement and/or Judgment.

KK. Settlement Administrator: The third party administrator agreed upon by Parties to administer this Settlement is CPT Group, Inc.

LL. Superior Court: The State of California, Orange County Superior Court.

II. RECITALS

A. Per the Complaint, the Plaintiff alleges, *inter alia*, on behalf of herself, all others similarly situated, and other aggrieved employees, that Defendants violated California state wage and hour laws and the California *Business and Professions Code* section 17200 *et seq.* and PAGA as a result of Defendants' wage and hour policies and practices. Specifically, Plaintiff alleges that Defendants 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.

B. After the filing of the Complaint, the Parties agreed to attend mediation. Prior to the mediation, the Parties conducted significant investigation and discovery of the facts and law both before and after the Class Action was filed. Prior to mediation, Defendant Coolsys Commercial & Industrial Solutions, Inc., formerly known as Source Refrigeration & HVAC, Inc. produced hundreds of documents relating to its policies, practices, and procedures regarding paying non-exempt employees for all hours worked, meal and rest period policies, and payroll and operational policies. As part of Defendant Coolsys Commercial & Industrial Solutions, Inc., formerly known as Source Refrigeration & HVAC, Inc.'s production, Plaintiff also reviewed time records, pay records, and information relating to the size and scope of the Class, as well as data permitting

Plaintiff to understand the number of workweeks in the Class Period. The Parties agree that the above-described investigation and evaluation, as well as the information exchanged during the settlement negotiations, are more than sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis.

- C. Plaintiff and Class Counsel have engaged in good faith, arms-length negotiations with Defendants concerning possible settlement of the claims asserted in the Class Action. On January 26, 2021, the Parties participated in a mediation before mediator Gig Kyriacou of Kyriacou Mediation. No settlement resulted at that mediation session, but rather a mediator's proposal was issued and left open through 2:30 p.m. on February 5, 2021. The Parties accepted the proposal subject to the approval of the Court and finalization of a formal Settlement Agreement and amended complaint alleging class action allegations.
- D. **Benefits of Settlement to Class Members.** Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendants through trial and through any possible appeals. Plaintiff and Class Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, the existing arbitration agreements and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel conducted extensive settlement negotiations, including formal mediation on January 26, 2021. Based on the foregoing, Plaintiff and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members.
- E. **Defendants' Reasons for Settlement.** Defendants recognize that the defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendants have been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff. Defendants, therefore, have agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims.
- F. **Defendants' Denial of Wrongdoing.** Defendants generally and specifically deny any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than settlement, the Class Action is not appropriate for PAGA or class treatment. Defendants assert a number of defenses to the claims, and has denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Class Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any statements, discussions or communications, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendants or any of the Released

Parties of any fault, wrongdoing, or liability whatsoever. Nor should the Agreement be construed as an admission that Plaintiff can serve as adequate Class Representatives. There has been no final determination by any court as to the merits of the claims asserted by Plaintiff against Defendants or as to whether a class or classes should be certified, other than for settlement purposes only.

- G. Plaintiff's Claims.** Plaintiff asserts that Defendants' defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession or indication by or against Plaintiff, Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Class Action. However, in the event that this Settlement is finally approved by the Court, none of Plaintiff, Class Members, or Class Counsel will oppose Defendants' efforts to use this Agreement to prove that Plaintiff and Class Members have resolved and are forever barred from re-litigating the Released Claims.

III. SETTLEMENT TERMS AND CONDITIONS

- A. Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum Gross Settlement Amount that Defendants are obligated to pay under this Settlement Agreement is Five Hundred, Twenty-Seven Thousand, Five Hundred Dollars and Zero Cents (\$527,500.00).
- B. Escalator Clause.** The Parties reached this Agreement based on a calculation of 52,546 workweeks. If the number of workweeks increases by more than 10% (which is more than 57,801 workweeks) as of the end of the Class Period, Defendants would increase the Gross Settlement Amount on a proportional basis for the amount in excess of the 10% threshold (i.e. if there are more than 57,801 workweeks worked by Class Members during the Class Period, Defendants would increase the Gross Settlement Amount proportionately with the number of workweeks in excess of 57,801). Specifically there will be a pro rata adjustment to the Settlement equal to \$10.04 per additional workweek above 57,801.
- C. Notice to the Labor and Workforce Development Agency ("LWDA").** On July 10, 2020, Plaintiff filed and served her Notice of Labor Code Violations Pursuant to Labor Code Section 2699.3 and filed and served an amended Notice of Labor Code Violations on September 15, 2020. Thus, Plaintiff has satisfied her notice obligations under the PAGA. A copy of the Motion for Preliminary Approval of this Settlement was served on the LWDA on August 20, 2021.
- D. Class Certification.** Solely for the purposes of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Class Members. As such, the Parties stipulate and agree that in order for this

Settlement to occur, the Court must certify the Class as defined in this Agreement.

- E. Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiff and Class Members for purposes of this Settlement only. This Stipulation is contingent upon the Preliminary and Final approval and certification of the Settlement Class only for purposes of settlement. If the Settlement does not become final, for whatever reason, the fact that the Parties were willing to stipulate provisionally to certification as part of the Settlement shall have no bearing on and shall not be admissible or used in any way in connection with, the question of whether the Court should certify any claims in a non-settlement context in this Class Action or in any other lawsuit. Defendant expressly reserves the right to oppose class certification and/or to proactively move to deny class certification should this Settlement be modified or reversed on appeal or otherwise not become final.
- F. Appointment of Class Representatives.** Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiff shall be appointed as the representatives for the Class.
- G. Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court appoint Class Counsel to represent the Class.
- H. Individual Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Settlement Share from the Net Settlement Amount to each Participating Class Member.

1. Calculation.

- a. Individual Settlement Share Calculation.** Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the number of weeks he or she worked during the Class Period based on the Class data provided by Defendants, divided by (ii) the total number of weeks worked by any and all Participating Class Members collectively, during the Class Period based on the same Class data, which is then multiplied by the Net Settlement Amount. One day worked in a given week will be credited as a week for purposes of this calculation. Therefore, the value of each Participating Class Member's Individual Settlement Share ties directly to the amount of weeks that he or she worked.

- 2. Tax Withholdings.** Each Participating Class Member's Individual Settlement Share will be apportioned as follows: 1/3 wages, 1/3 penalties

and 1/3 interest. 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.

I. Settlement Disbursement. Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount:

- 1. To the Plaintiff.** In addition to her respective Individual Settlement Shares, and subject to the Court's approval, Plaintiff will receive up to Five Thousand Dollars and Zero Cents (\$5,000) as a Class Representative Enhancement Payment. The Settlement Administrator will pay the Class Representative Enhancement Payments out of the Qualified Settlement Fund. 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. In the event the Court does not approve the entirety of the application for the Class Representative Enhancement Payments, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendants nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Plaintiff, the difference shall become part of the NSA and be available for distribution to Participating Class Members.
- 2. To Class Counsel.** Class Counsel will apply to the Court for, and Defendants agree not to oppose, a total Attorney Fee Award not to exceed thirty-three and one-third percent (33 1/3%) or \$175,833.33 of the GSA and a Cost Award not to exceed \$15,000. The Settlement Administrator will pay the court-approved amounts for the Attorney Fee Award and Cost Award out of the Gross Settlement Fund. The Settlement Administrator may purchase an annuity to utilize US treasuries and bonds or other attorney fee deferral vehicles for Class Counsel. Payroll tax withholding and deductions will not be taken from the Attorney Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with respect to these payments. In the event the Court does not approve the entirety of the application for the Attorney Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendants nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorney

Fee Award and/or Cost Award, the difference shall become part of the NSA and be available for distribution to Participating Class Members.

3. **To the Responsible Tax Authorities.** The Settlement Administrator will pay the amount of the Participating Class Members' portion of normal payroll withholding taxes out of each person's Individual Settlement Share. The Settlement Administrator will calculate the amount of the Participating Class Members' and Defendant Coolsys Commercial & Industrial Solutions, Inc., formerly known as Source Refrigeration & HVAC, Inc.'s portion of payroll withholding taxes. The Settlement Administrator will submit Defendant Coolsys Commercial & Industrial Solutions, Inc., formerly known as Source Refrigeration & HVAC, Inc.'s portion of payroll withholding tax calculation to Defendants for additional funding and forward those amounts along with each person's Individual Settlement Share withholdings to the appropriate taxing authorities.
4. **To the Settlement Administrator.** The Settlement Administrator – CPT Group, Inc. - will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed \$15,000. This will be paid out of the Qualified Settlement Fund. If the actual amount of Administration Costs is less than the amount estimated, the difference shall become part of the NSA and be available for distribution to Participating Class Members. In the event the Court does not approve the entirety of the application for the Administration Costs, the Settlement Administrator shall pay to itself whatever amount the Court awards, and neither Defendants nor the Plaintiff shall be responsible for paying the difference between the amount requested and the amount awarded.
5. **To Class Members.** The Settlement Administrator will pay Participating Class Members according to the Individual Settlement Share calculations set forth above. All payments to Participating Class Members shall be made from the Qualified Settlement Fund.
6. **To Eligible Aggrieved Employees.** 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. The entirety of Individual Eligible Aggrieved Employee Settlement will be

designated as penalties. 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 Defendants. 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.

J. Appointment of Settlement Administrator. Solely for the purposes of this Settlement, the Parties stipulate and agree that CPT Group, Inc. shall be retained to serve as Settlement Administrator. The Settlement Administrator shall be responsible for preparing, printing, translating into Spanish, and mailing the Notice to the Putative Class Members; keeping track of any objections or requests for exclusion from Class Members; performing skip traces and remailing Notices and Individual Settlement Shares to Class Members; calculating any and all payroll tax deductions as required by law; calculating each Class Member's Individual Settlement Share; providing weekly status reports to Defendants' Counsel and Class Counsel, which is to include updates on any objections or requests for exclusion that have been received; providing a due diligence declaration for submission to the Court prior to the Final Approval hearing; mailing Individual Settlement Shares to Participating Class Members; calculating and mailing the aggrieved employees Payment to the LWDA; distributing the Attorney Fee Award and Cost Award to Class Counsel; printing and providing Class Members and Plaintiff with W-2s and 1099 forms as required under this Agreement and applicable law; providing a due diligence declaration for submission to the Superior Court upon the completion of the Settlement; providing any funds remaining in the QSF as a result of uncashed checks to the state Department of Industrial Relations Unpaid Wages Fund in the name of the Settlement Class member, including the administration of related tax reimbursements; and for such other tasks as the Parties mutually agree.

K. CIRCULAR 230 DISCLAIMER. Each Party to this Agreement (for purposes of this section, the "Acknowledging Party" and each Party to this Agreement other than the Acknowledging Party, an "Other Party") acknowledges and agrees that:

- (1) No provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisors, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of U.S. Treasury Dept. Circular 230 (31 C.F.R. Part 10, as amended);
- (2) The Acknowledging Party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any Other Party or any attorney or advisor to any Other Party, and (c) is not entitled to rely upon any communication or disclosure

- by any attorney or advisor to any Other Party to avoid any tax penalty that may be imposed on the Acknowledging Party; and
- (3) No attorney or advisor to any Other Party has imposed any limitation that protects the confidentiality of any such attorney's or advisor's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

L. Procedure for Approving Settlement.

1. Motion for Preliminary Approval and Conditional Certification.

- a. Plaintiff will move for an order conditionally certifying the Class for settlement purposes only, giving Preliminary Approval of the Settlement, setting a date for the Final Approval hearing, and approving the Class Notice and Exclusion Form. Class counsel will submit to Defendants' counsel drafts of the motions for Preliminary Approval of settlement, Class Notice and Exclusion Form ("notice packets") to class members. Defendants' counsel will not unreasonably withhold approval. Plaintiff's counsel will not submit motions to the Court for Preliminary Approval, or notice packets, without Defendants' counsel's approval.
- b. At the Preliminary Approval hearing, the Plaintiff will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class and Preliminary Approval of the Settlement; appointing the Class Representatives, Class Counsel, and Settlement Administrator; approving the Class Notice; and setting the Final Approval hearing.
- c. Should the Court decline to conditionally certify the Class or to Preliminarily Approve all material aspects of the Settlement, the Parties will cooperate and provide their best efforts to resolve any questions or issues raised by the Court. Should the Agreement not become Final for any reason after the Parties cooperate and provide best efforts to resolve questions or issues raised by the Court including by entering into an amended settlement agreement resolving such issues, the Settlement will be null and void, and the Parties will have no further obligations under it. Provided, however, that the amounts of the Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these

items are not conditions of this Settlement Agreement, and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding relating to an application for the Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement shall not operate to terminate or cancel this Settlement Agreement. Nothing in this Agreement shall limit Plaintiff's or Class Counsel's ability to appeal any decision by the Court to award less than the requested Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Enhancements.

2. Notice to Class Members. After the Court enters its Preliminary Approval Order, every Class Member will be provided with the Class Notice in accordance with the following procedure:

- a.** Within twenty-one (21) calendar days after entry of the Preliminary Approval Order, Defendants shall deliver to the Settlement Administrator the following information about each Class Member: (1) first and last name; (2) last known mailing address; (3) social security number; (4) hire and termination dates; and (5) the total number of weeks during which the Class Member performed any actual work during the Class Period as a member of the Class ("collectively "Class List"). If any or all of this information is unavailable to Defendants, Defendants will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Settlement Administrator will conduct a skip trace for the address of all former Defendant Coolsys Commercial & Industrial Solutions, Inc., formerly known as Source Refrigeration & HVAC, Inc. employee Class Members and all return mail. The Settlement Administrator shall maintain the Class List and all data contained within the Class List as private and confidential.
- b.** The Settlement Administrator shall run all the addresses on the Class List through the United States Postal Service NCOA database (which provides updated addresses for any individual who has moved in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain current address information. The Settlement Administrator shall translate the Class Notice and Exclusion Form to Spanish, and shall mail both English and Spanish translations of the Class Notice and Exclusion Form to the Class Members via first-class regular U.S. Mail using the most current mailing address information available within fourteen (14) calendar days after the receipt of the Class List from Defendants.

- c. If a Class Notice is returned because of an incorrect address, within ten (10) days from receipt of the returned Notice, the Settlement Administrator will conduct a search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the National Change of Address Database and skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Settlement Administrator is unable to locate a better address, the Class Notice shall be re-mailed to the original address. If the Class Notice is re-mailed, the Settlement Administrator will note for its own records the date and address of each re-mailing. Those Class Members who receive a re-mailed Class Notice, whether by skip-trace or forwarded mail, will have their Response Deadline to postmark an Exclusion Form, or file and serve an objection to the Settlement extended by ten (10) calendar days from the original Response Deadline. The Settlement Administrator shall mark on the envelope whether the Class Notice is a re-mailed notice.
- d. Class Members may dispute the information provided in their Class Notice, but must do so in writing, via first class mail, and it must be postmarked by the Response Deadline. Those Class Members who receive a re-mailed Class Notice, whether by skip-trace or forwarded mail, will have their Response Deadline to submit any disputes extended by ten (10) calendar days from the original Response Deadline. To the extent Class Members dispute the number of weeks to which they have been credited or the amount of their Individual Settlement Share, Class Members must produce evidence to the Settlement Administrator showing that such information is inaccurate. Absent evidence rebutting Defendants' records, Defendants' records will be presumed determinative. However, if a Class Member produces evidence to the contrary, the Parties will evaluate the evidence submitted by the Class Member and will make the final decision as to the number of eligible weeks that should be applied and/or the Individual Settlement Share to which the Class Member may be entitled. The Parties will submit all disputes, along with the evidence submitted and initial resolution of those disputes, to the Court and the Court shall have the right to review any initial

decision made by the Parties or Settlement Administrator regarding the dispute.

- e. If any Exclusion Form received is incomplete or deficient, the Settlement Administrator shall send a letter informing the Class Member of the deficiency and allow fourteen (14) calendar days to cure the deficiency. If after the earlier of the cure deadline or the Response Deadline, the Exclusion Form is not cured, it will be determined that the Class Member did not exclude himself or herself from the Settlement and will be bound by the Settlement.
- f. The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendants' Counsel of the number of Notice Packets mailed, the number of Notice Packets returned as undeliverable, the number of Notice Packets re-mailed, and the number of Exclusion Forms received.
- g. No later than fourteen (14) calendar days after the Response Deadline, the Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement and include an estimated high, low, and average for individual settlement payments, along with Plaintiff's individual payment. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel no later than ten (10) calendar days before the Final Approval hearing. Before the Final Approval hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

3. Objections to Settlement. The Class Notice will provide that the Class Members who wish to object to the Settlement must do so in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than the Response Deadline. In order for any Class Member to object to this Settlement, or any term of it, the person making the objection must not submit a request for exclusion (i.e., must not opt out). The timeframe to submit an objection will not be increased for returned mailings.

- a. **Format.** Any Objections shall state: (a) the objecting person's full name, address, and telephone number and the name and address of counsel, if any; (b) the words "Notice of Objection" or "Formal Objection;" (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) the objector may call to testify at the Final Approval hearing; and (e) provide true and correct copies of any exhibit(s)

the objector intends to offer at the Final Approval hearing; (f) signed by the objecting Class Member or his or her attorney; and (g) state whether the objecting Class Member (or someone on his or her behalf) intends to appear at the Final Approval Hearing.

- b. Appearance at Final Approval and Oral Objection.** Class Members may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector's own counsel, at his or her own expense and orally object to the Settlement. Any attorney who will represent an individual objecting to this Settlement must file a notice of appearance with the Court and serve Class Counsel and Defense Counsel no later than fifteen (15) calendar days before the Final Approval hearing.
 - c.** If a Class Member objects to the Settlement, the objecting Class Member will remain a member of the Settlement and if the Court approves the Settlement, the objecting Class Member will be bound by the terms of the Settlement in the same way and to the same extent as a Participating Class Member who does not object.
 - d.** Named Plaintiff and Defendants will be permitted to respond in writing to such objections no later than seven (7) calendar days before the Final Approval hearing. Named Plaintiff waives any right to object to the Settlement, and hereby endorses the Settlement as fair, reasonable and adequate and in the best interests of the Settlement Class.
- 4. Request for Exclusion from the Settlement ("Opt-Out").** The Class Notice will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator an Exclusion Form. The written request for exclusion must: (a) include the Class Member's name, address, and last four digits of the social security number; (b) be addressed to the Settlement Administrator; (c) be signed by the Class Member or his or her lawful representative; and (d) be postmarked no later than the Response Deadline.
- a. Confirmation of Authenticity.** The date of the initial mailing of the Class Notice, and the date the signed request to be excluded is postmarked, shall be conclusively determined according to the records of the Settlement Administrator. If there is a question about the authenticity of a signed request for exclusion, the Settlement Administrator may demand additional proof of the Class Member's identity. Any Class Member who returns a timely, valid, and executed Exclusion Form will not participate in or be bound by the Settlement and Judgment, will not receive an Individual Settlement Share and will not have any right to object,

appeal, or comment thereon. 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.

- b. Report.** No later than seven (7) calendar days after the Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Notices mailed to Class Members, the number of Notices returned as undeliverable, the number of Notices re-mailed to Class Members, the number of re-mailed Notices returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid requests for exclusion, and the number of Class Members who returned invalid requests for exclusion.
- c. Defendants' Option to Terminate.** If more than five percent (5%) of the Class Members submit Exclusion Forms, Defendants, at its sole option, may withdraw from the Settlement and this Agreement is null and void. To exercise this option Defendants must do so within thirty (30) days after expiration of the opt-out period.

- 5. No Solicitation of Objection or Requests for Exclusion.** Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Judgment.

6. Motion for Final Approval.

- a.** Upon expiration of the Objection/Exclusion Deadlines, Class Counsel will file unopposed motions and memorandums in support thereof for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: (1) the Attorney Fee Award; (2) the Cost Award; (3) Administrative Costs; (4) the Class Representative Enhancement; and (5) PAGA Payment. Class Counsel will also move the Court for an order of Final Approval (and associated entry of Judgment) releasing and barring any Released Claims of the Class Members who do not opt out of the Settlement. Class counsel will submit to Defendants counsel drafts of the motion for Final Approval of settlement to class members. Defendants' counsel will not unreasonably

withhold approval. Plaintiff's counsel will not submit motions to the Court without Defendants' counsel's approval.

- b. If the Court does not grant Final Approval of the Settlement, or if the Court's Final Approval of the Settlement is reversed or materially modified on appellate review, then this Settlement will become null and void. If that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendants to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Agreement. Further, should this occur, the Parties agree Plaintiff shall be responsible for the Settlement Administrator's Administration Costs through that date. An award by the Court of a lesser amount than sought by Plaintiff and Class Counsel for the Class Representative Enhancement, the Attorney Fee Award, and/or the Cost Award, will not constitute a material modification to the Settlement within the meaning of this paragraph.
 - c. Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the Class Action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters, and (3) addressing such post-Judgment matters as may be appropriate under Court rules and applicable law.
7. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, if Class Members do not timely object to the Settlement, then the Parties and their respective counsel waive any and all rights to appeal from the Judgment, including, but not limited to, all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, and any extraordinary writ, and the Judgment will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceeding, or post-judgment proceeding.
8. **Vacating, Reversing, or Modifying Judgment on Appeal.** If, after a notice of appeal, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the Gross Settlement Amount, an alteration in the calculation

of the Net Settlement Amount, and any change to the calculation of the Individual Settlement Share.

9. Disbursement of Settlement Shares and Payments. Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Superior Court's Final Approval Order and Judgment. The maximum amount Defendants can be required to pay under this Settlement for any purpose is the Gross Settlement Amount. The Settlement Administrator shall keep Defendants' Counsel and Class Counsel apprised of all distributions from the Gross Settlement Amount. The Settlement Administrator shall respond to questions from Defendants' Counsel and Class Counsel..

- a. **Funding the Settlement:** Provided there is an Effective Settlement Agreement, no later than thirty (30) days after the Court grants final approval of the settlement, Defendants or its designee shall deposit the Gross Settlement Amount and any apportioned employer's share of payroll taxes by wiring funds into a QSF set up and controlled by the Settlement Administrator. In the event there are objectors to the Joint Stipulation and Settlement Agreement, payment shall be made within seven (7) calendar days after the time to appeal has run or all appeals have been exhausted, whichever occurs later.
- b. **Disbursement:** Within fourteen (14) calendar days after the funding of the Settlement, the Settlement Administrator shall calculate and pay all payments due under the Settlement Agreement, including all Individual Settlement Shares, the Attorney Fee Award, the Cost Award, the Class Representative Enhancements, the PAGA Payment, and the Administration Costs. The Settlement Administrator will forward a check for 75% of the PAGA Payment to the LWDA for settlement of the PAGA claim.
- c. **QSF:** The Parties agree that the QSF is intended to be a "Qualified Settlement Fund" under Section 468B of the Code and Treasury Regulations § 1.4168B-1, 26 C.F.R. § 1.468B-1 *et seq.*, and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.

10. Uncashed Checks. 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.

11. Final Report by Settlement Administrator. Within ten (10) calendar days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds.

12. Defendants' Legal Fees. Defendants are responsible for paying for all of Defendants' own legal fees, costs, and expenses incurred in this Class Action outside of the Gross Settlement Fund.

M. Release of Claims.

- 1. Participating Class Members.** Upon Defendants' fulfillment of their payment obligations under Section III (K)(9)(a), Class Members, who do not submit a timely and valid request for exclusion, hereby waive, release, promise never to assert in any forum, remise and forever discharge the Released Parties from the Released Claims for the time frame from October 1, 2016, through April 1, 2021.
- 2. Plaintiff.** Plaintiff will enter into an individual settlement agreement, which shall provide for an Individual Settlement Payment, as provided for in this Agreement, and which shall provide for a broad release. This release, waiver and discharge of all claims shall include, but will not be limited to, any and all claims arising out of the Action, as well as additional claims described in the Individual Settlement Agreement
- 3. Class Counsel.** As of the date the Judgment becomes Final, and except as otherwise provided by this Agreement and the Judgment, Class Counsel and any counsel associated with Class Counsel waive any claim to costs and attorneys' fees and expenses against Defendants arising from or related to the Class Action.
- 4. Signatures of All Class Members Unnecessary to Be Binding.** The Parties agree for settlement purposes only that, because the Class Members are so numerous, it is impossible or impracticable to have each Class Member execute this Agreement. Accordingly, the Notices will advise all Class Members of the binding nature of their releases and, if the Court

grants final approval of this Settlement Agreement, this Agreement shall have the same force and effect as if it were executed by each Class Member.

N. Effect of PAGA Settlement. 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.

O. Miscellaneous Terms

1. **No Admission of Liability.** Defendants make no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendants reserve the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendants deny that it has engaged in any unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under the claims asserted in the Case, or that but for the Settlement, a Class should be certified in the Case. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendants of liability or wrongdoing. This Settlement and Plaintiff’s and Defendants’ willingness to settle the Case will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with this Settlement).
2. **No Effect on Employee Benefits.** The amounts paid under this Agreement do not represent a modification of any previously credited hours of service under any employee benefit plan, policy or bonus program sponsored by Defendants. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under, benefit plans (self-insured or not) sponsored by Defendants’, policies or bonus programs. Any payments made under the terms of this Settlement shall not be applied retroactively, currently or on a going forward basis as salary, earnings, wages, or any other form of compensation for the purposes of Defendants’ benefit plan, policy or bonus program. Defendants retain the right to modify the language of their benefit plans, policies and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this Settlement are not for “hours worked,” “hours paid,” “hours of service,” or any similar measuring term as defined by applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit

accrual or any other purpose, and that additional contributions or benefits are not required by this Settlement..

- 3. Publicity.** Class Counsel and Plaintiff agree to discuss the terms of this Settlement only in declarations submitted to a court to establish Class Counsel's adequacy to serve as class counsel, in declarations submitted to a court in support of motions for preliminary approval, Final Approval, for attorneys' fees/costs, and any other pleading filed with the Court in conjunction with the Settlement, and in discussions with Class Members in the context of administering this Settlement until the Preliminary Approval Order is issued. Class Counsel and Plaintiff agree that they shall not publish any press releases or press statements regarding the Settlement, identify Defendants or Defendants' counsel by name in any media including Class Counsel's website, or have any communications with the press or media about the Action or the Settlement. Plaintiff, in response to inquiries, will state that that "the Case was resolved."
- 4. Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary or contradict its terms. In entering into this Agreement, the parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. Nothing in this Agreement in any way limits or negates the enforceability and effect of the underlying arbitration agreements signed by employees of Defendants, obligating them to arbitrate any and all claims on an individual (and not on a class, collective, or representative) basis.
- 5. Authorization to Enter Into Settlement Agreement.** Class Counsel and Defendants' Counsel warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will

seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.

- 6. Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
- 7. Deadlines Falling on Weekends or Holidays.** To the extent that any deadline set forth in this Settlement Agreement falls on a Saturday, Sunday or legal holiday, that deadline shall be continued until the following business day.
- 8. Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Class Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.
- 9. Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.
- 10. Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
- 11. No Prior Assignment.** Plaintiff hereby represents, covenants, and warrants that she has not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.
- 12. Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
- 13. Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Class Action and have arrived at

this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.

- 14. No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Class Members will assume any such tax obligations or consequences that may arise from this Agreement, and that Class Members shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Class Member, such Class Member assumes all responsibility for the payment of such taxes.
- 15. Force Majeure.** The failure of any party to perform any of its obligations hereunder shall not subject such party to any liability or remedy for damages, or otherwise, where such failure is occasioned in whole or in part by acts of God, fires, accidents, earthquakes, other natural disasters, explosions, floods, wars, interruptions or delays in transportation, power outages, labor disputes or shortages, shortages of material or supplies, governmental laws, restrictions, rules or regulations, sabotage, terrorist acts, acts or failures to act of any third parties, or any other similar or different circumstances or causes beyond the reasonable control of such party.
- 16. Jurisdiction of the Superior Court.** 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.
- 17. Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.
- 18. Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

19. Execution in Counterpart. This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: 9/24/2021, 2021

MELINDA JAMES

DocuSigned by:


Plaintiff
ID: F51ACB3C4F9...

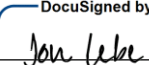
Dated: _____, 2021

**COOLSYS COMMERCIAL & INDUSTRIAL
SOLUTIONS, INC. and COOLSYS, INC.**

Defendants
Burton Hong
EVP and General Counsel

Dated: 9/24/2021, 2021

LEBE LAW, APLC

DocuSigned by:


Jonathan Lebe, Esq.
Annaliz Loera, Esq.
Attorneys for Plaintiff Melinda James, on behalf of
herself and all others similarly situated

Dated: _____, 2021

FISHER & PHILLIPS LLP

Christine D. Baran, Esq.
Ashton M. Riley, Esq.

Attorneys for Defendants Coolsys Commercial &
Industrial Solutions, Inc., formerly known as Source
Refrigeration & HVAC, Inc. and Coolsys, Inc.

19. Execution in Counterpart. This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

IV. EXECUTION BY PARTIES AND COUNSEL

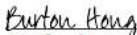
The Parties and their counsel execute this Agreement.

Dated: _____, 2021 **MELINDA JAMES**

Plaintiff

Dated: 9/24/21, 2021 **COOLSYS COMMERCIAL & INDUSTRIAL SOLUTIONS, INC. and COOLSYS, INC.**

DocuSigned by:

_____

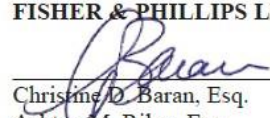
Defendants

Burton Hong
EVP and General Counsel

Dated: _____, 2021 **LEBE LAW, APLC**

Jonathan Lebe, Esq.
Annaliz Loera, Esq.
Attorneys for Plaintiff Melinda James, on behalf of
herself and all others similarly situated

Dated: September 23, 2021 **FISHER & PHILLIPS LLP**

_____
Christine D. Baran, Esq.
Ashton M. Riley, Esq.

Attorneys for Defendants Coolsys Commercial &
Industrial Solutions, Inc., formerly known as Source
Refrigeration & HVAC, Inc. and Coolsys, Inc.

NOTICE OF PENDENCY OF CLASS AND PAGA ACTION SETTLEMENT

If you are or were employed by Coolsys Commercial & Industrial Solutions, Inc., formerly known as Source Refrigeration & HVAC, Inc. ("Coolsys"), as a non-exempt hourly employee within the State of California at any time during the period from October 1, 2016 through April 1, 2021, a class action settlement may affect your rights.

A court authorized this Notice in the matter of James v. Coolsys Commercial & Industrial Solutions, Inc., et al., Orange County Superior Court Case No. 30-2020-01163014-CU-OE-CXC

Your legal rights may be affected by this Settlement. Please read this Notice carefully.

Plaintiff sued Coolsys, and Coolsys, Inc. on behalf of herself, all others similarly situated, and other aggrieved employees, for the following claims: (1) failure to pay all minimum wages; (2) failure to pay all overtime wages; (3) failure to pay all wages; (4) failure to pay all reporting time pay; (5) failure to provide timely and complaint meal periods (including without limitation first and second meal breaks); (6) failure to provide timely and complaint rest breaks; (7) failure to provide accurate and itemized wage statements; (8) failure to timely pay all wages due upon termination/separation of employment; (9) violation of Business and Professions Code §§ 17200, *et seq.*; and (10) violation of the Private Attorney General Act ("PAGA") (the "Action"). Plaintiff seeks to recover on behalf of all similarly situated current and former non-exempt hourly employees of Defendant all damages and penalties under California law. Coolsys and Coolsys, Inc. strongly deny any and all allegations and claims alleged in the Action, and deny any and all wrongdoing and liability. The proposed Settlement is not a concession or admission by Coolsys or Coolsys, Inc. that the Action has any merit whatsoever. The Court has not ruled on the merits of Plaintiff's claims. The Court has preliminarily approved the Settlement in this Action and determined that there is sufficient evidence to suggest that the proposed Settlement is fair, adequate, and reasonable. You have a right to know about the proposed Settlement and about your options before the Court decides whether to finally approve the Settlement. If you qualify as a Settlement Class Member, you may receive money from the Settlement. A final determination will be made by the Court at a Final Approval/Settlement Fairness Hearing.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
You can DO NOTHING	You will receive a payment from the Settlement (your Individual Settlement Payment). If you do nothing, you will continue your participation in this lawsuit, and you will receive your individual share of the Settlement. In exchange for this payment, you will release (give up) any rights to sue Coolsys or Coolsys, Inc. separately for the same legal claims that are part of this lawsuit (see Section 11 for an explanation of the Released Claims).
You can EXCLUDE YOURSELF FROM THE SETTLEMENT	If you ask to be excluded from the Settlement, you will get no payment from the Settlement (unless you are an Eligible Aggrieved Employee), but you will keep any rights to sue Coolsys or Coolsys, Inc. for any claims other than the PAGA Released Claims. If you ask to be excluded from the Settlement, you cannot object to the Settlement. Note that Eligible Aggrieved Employees (see definition in Section 1 below) cannot ask to be excluded from participating in the settlement of the PAGA claims in the Action or from the PAGA Released Claims (see Section 11).
You can OBJECT TO THE SETTLEMENT	If you do not agree with the Settlement, you can object to the Settlement according to the procedures described fully below in Section 13. The Court may or may not agree with your objection. However, if the Court does not agree with your objection, you will still be bound by the terms of the Settlement and will receive a settlement payment. Objecting to the Settlement will not exclude you from receiving a portion of the

	Settlement.
--	-------------

1. Why Did I Get This Notice?

You are not being sued. You received this Notice because Coolsys' records show that you (a) are a current or former non-exempt hourly employee of Coolsys in California during the period of October 1, 2016 through April 1, 2021 (the "Class Period") (defined as a "Settlement Class Member"), and/or (b) are a current or former non-exempt hourly employee of Coolsys in California during the period of April 6, 2019 through April 1, 2021 (the "PAGA Period") (defined as "Eligible Aggrieved Employee"). If you received this Notice, you are either a "Settlement Class Member" and/or a "Eligible Aggrieved Employee" for the Settlement described in this Notice.

You received this Notice because you have a right to know about a proposed Settlement of a class and PAGA action lawsuit and about your options before the Court decides whether to finally approve the Settlement. If the Court approves the Settlement, and after any objections and/or appeals are resolved, the Settlement Administrator appointed by the Court will make all payments that the Settlement allows and as approved by the Court.

This Notice explains the Action, the Settlement, your legal rights, what benefits are available, who is eligible to receive them, and how to receive payment.

2. What is This Action About?

In this lawsuit, the Named Plaintiff filed a putative class and representative action against Coolsys and Coolsys, Inc. for various wage and hour violations. The Operative Complaint alleges that Coolsys and Coolsys, Inc. violated Labor Code §§ 201-203, 510, 558, 1194, 1197.1, and 1198 by failing to properly and timely pay all wages, including reporting time pay, minimum wages, regular wages, overtime and double time. Additionally, Named Plaintiff claims that Coolsys and Coolsys, Inc. violated Labor Code §§ 226.7 and 512 by failing to provide meal breaks (including without limitation first and second meal breaks) and failing to authorize and permit legally compliant rest breaks. The Operative Complaint also alleges that Coolsys and Coolsys, Inc. did not provide accurate wage statements in compliance with Labor Code § 226(a). Named Plaintiff also claims that Coolsys and Coolsys, Inc. failed to timely pay all wages owed to its employees during and upon separation of employment. Further, Named Plaintiff also claims that Coolsys and Coolsys, Inc. violated the Business and Professions Code §§ 17200, *et seq.* In addition to the class claims, Named Plaintiff also brought these same claims on a representative basis under the Private Attorneys General Act (PAGA).

Coolsys and Coolsys, Inc. strongly deny any and all allegations and claims alleged in the Action, and deny any and all wrongdoing and liability.

The parties have reached an agreement to resolve the class and PAGA claims in the lawsuit. The Court has preliminarily approved Plaintiff to represent the Settlement Class. However, the Court has not made any findings with respect to the merits of Plaintiff's claims.

3. Do I Need to Hire an Attorney?

You do not need to hire your own attorney. The Court has already preliminarily appointed the law firms of Lebe Law as Class Counsel (see Section 15 for Class Counsel's information). However, if you want to be represented by your own lawyer, you may hire one at your own expense.

4. What is Coolsys' and Coolsys, Inc.'s Position?

Coolsys and Coolsys, Inc. deny any wrongdoing or liability whatsoever and deny that wages, damages, or penalties are owed, or that it acted contrary to California law. Coolsys and Coolsys, Inc. believe that it has valid defenses to Plaintiff's claims. By agreeing to settle, Coolsys and Coolsys, Inc. are not admitting liability on any of the factual or legal allegations in the Action, or that the Action can proceed as a class or representative action. Coolsys and Coolsys, Inc. have agreed to settle the Action as a compromise with Plaintiff and Class Counsel.

5. Why is There a Settlement?

The Court did not decide in favor of Plaintiff, Coolsys or Coolsys, Inc. After a thorough investigation into the fact and claims of this Action, the parties agreed to the Settlement following a mediation session with a neutral third-party mediator. The Action settled because Class Counsel and Plaintiff believe that the amount of the Settlement is fair, adequate, and reasonable in light of the strengths and weaknesses of the claims and other potential factors affecting this Action.

6. What Does the Settlement Provide?

The proposed Settlement provides for a payment by Coolsys and Coolsys, Inc. in the gross settlement amount of \$527,500.00 to fully and finally resolve all claims in the lawsuit. The total amount to be distributed to Settlement Class Members who do not exclude themselves from the Settlement, will be the gross settlement amount minus the following (the Net Settlement Amount"): (a) settlement administration costs not to exceed \$15,000.00; (b) class representative service award to Named Plaintiff not to exceed \$5,000.00, to compensate her for the risks, time, and expense of her involvement and efforts to prosecute the Action; (c) Class Counsel's attorneys' fees not to exceed \$175,833.33; (d) Class Counsel's actual litigation costs and expenses as supported by declaration not to exceed \$15,000.00; (e) payment of \$18,750.00 to the California Labor and Workforce Development Agency (LWDA) as part of the settlement of the PAGA claims; and (f) payment of \$6,250.00 to be distributed among Eligible Aggrieved Employees as part of the settlement of the PAGA claims. No portion of the Net Settlement Amount will be returned to Coolsys or Coolsys, Inc. under any circumstances.

Based on the foregoing, the total Net Settlement Amount available to be distributed to the Settlement Class Members, should the foregoing amounts be awarded in full, is estimated at \$291,666.67.

7. What Can I Get from the Settlement?

Settlement Class Members (who do not request to be excluded) will be paid their individual settlement payment from the Net Settlement Amount. 33.3% of each individual settlement payment will be designated for alleged unpaid wages, for which an IRS Form W-2 shall be issued. 33.3% will be designated for alleged interest, for which an IRS Form 1099 shall be issued. The remaining 33.3% will be designated for alleged penalties, for which an IRS Form 1099 shall be issued. Individual settlement payments from the Net Settlement Amount are subject to any applicable tax withholdings. To the extent that any portion of the Settlement Class Members' settlement proceeds constitute wages, Coolsys will be separately responsible for the employer-paid portion of employer taxes, which will not be paid from the gross settlement amount.

Eligible Aggrieved Employees will be paid a pro rata portion of the \$6,250.00 payment allocated to resolve the PAGA claims (see Section 8). The entirety of each individual PAGA settlement payment to Eligible Aggrieved Employee will be designated as penalties, for which an IRS Form 1099 shall be issued.

Each Settlement Class Member and Eligible Aggrieved Employee will be solely responsible for his/her share of taxes owed as a result of any payments received under this Settlement. The amount of tax withholdings from your individual settlement payment may or may not be sufficient to cover your applicable tax obligations to the Internal Revenue Service and/or California Franchise Tax Board. Please consult your tax adviser, as needed. Neither the named parties nor any counsel in this Action make any representations as to the tax treatment of individual settlement payments provided by the Settlement.

8. How Was My Individual Payment Amount Calculated?

Calculation of Settlement Class Members' Individual Settlement Payments:

Your estimated share of the settlement payment is based on the number of Eligible Workweeks, which is defined as the number of workweeks that you worked as a non-exempt hourly employee for Coolsys in California during the period of October 1, 2016 through April 1, 2021 (the "Class Period"). Based on Coolsys' records, the Settlement Administrator calculated each Settlement Class Member's individual settlement payment by: (1) dividing the Net Settlement Amount by the total number of Eligible Workweeks worked by all Settlement Class Members during the Class Period to determine the Workweek Amount, and then (2) multiplying the Workweek Amount by the number of Eligible Workweeks worked by the individual Settlement Class Member during the Class Period as listed above. Each individual settlement payment will be reduced by any legally mandated deductions (e.g., payroll taxes, etc.), for each Settlement Class Member.

Based on Coolsys' records, the number of Eligible Workweeks you worked during the Class Period is . Your estimated Individual Settlement Payment, subject to mandatory deductions and withholdings, is \$.

Settlement Class Members who submit valid and timely requests for exclusion will not be entitled to receive the above-referenced individual settlement payments. The estimated individual settlement payments allocated to those individuals will become part of the Net Settlement Amount and redistributed to the remaining Settlement Class Members, as calculated by the Settlement Administrator to proportionally increase the payments to Settlement Class Members who do not request exclusion, such that the aggregate of settlement payout to Settlement Class Members equals 100% of the NSA.

Calculation of Eligible Aggrieved Employees' Individual PAGA Settlement Payments:

The amount of individual PAGA settlement payments to be paid to each Eligible Aggrieved Employee will be based on the number of workweeks worked by the individual Eligible Aggrieved Employee as a non-exempt hourly employee in California during the PAGA Period. Your estimated Individual PAGA Settlement Payment is \$.

Because the PAGA penalties can only be sought by the State of California, you cannot exclude yourself from the PAGA portion of the Settlement if the Court gives final approval to the Settlement. Even if you exclude yourself from the class action portion of the settlement, you will still receive your portion of the PAGA payment, will release the PAGA Released Claims, and will be barred from asserting any claim against Defendant pursuant to the PAGA based on the PAGA Released Claims.

9. How Can I Get Payment?

You do not need to take any action to qualify for payment. For Settlement Class Members, if you do not opt out (exclude yourself) from the Settlement, you will automatically receive your individual settlement payment. For Eligible Aggrieved Employees, your payment will be automatically mailed to you.

However, if you dispute the number of Eligible Workweeks worked listed above, you may contact the Settlement Administrator with a written statement setting forth the following: (1) the number of Eligible Workweeks that you

believe in good faith is correct, (2) that you authorize the Settlement Administrator to review your personnel file to determine the accuracy of the information, and (3) attaching any relevant documentation to support your dispute, if any. You must mail or fax the written statement to the Settlement Administrator at 50 Corporate Park, Irvine, CA 92606 or 1-949-419-3446 no later than [45 DAYS AFTER MAILING DATE]. If you receive a re-mailed Notice, your deadline to submit any disputes is extended by 10 calendar days from [REDACTED].

The Settlement Administrator will consult with Class Counsel and Counsel for Coolsys and Coolsys, Inc. and will review any pertinent payroll records to resolve any Eligible Workweek disputes. If you dispute the number of weeks to which you have been credited or the amount of your Individual Settlement Share, you must produce evidence to the Settlement Administrator showing that such information is inaccurate. Absent evidence rebutting Coolsys' records, Coolsys' records will be presumed determinative. However, if you produce evidence to the contrary, Class Counsel and Counsel for Coolsys and Coolsys, Inc. will evaluate the evidence submitted and will make the final decision as to the number of eligible weeks that should be applied and/or the Individual Settlement Share to which the you may be entitled. If you do nothing, you will receive your individual settlement payment calculated based on the number of Eligible Workweeks as identified in this Notice and be bound by the terms of the Settlement (including the Released Claims described in Section 11). All disputes regarding Eligible Workweeks will be submitted to the Court, who will have the right to review and reverse any decision made by the Settlement Administrator regarding the dispute.

10. When Would I Get My Payment?

The Court will hold the Final Approval/Settlement Fairness Hearing on [TENTATIVE: Thursday, [REDACTED], 2021], at [2:00 pm], in Department CX-102 of the California Superior Court for the County of Orange, located at 751 W. Santa Ana Blvd., Santa Ana, CA 92701, to decide whether to grant final approval of the Settlement and enter final judgment. This hearing date is subject to continuance without further notice. If the Court grants final approval of the Settlement, your individual settlement payment will be mailed after entry of Final judgment, unless there are objections, appeals, or other challenges to the Settlement, the Final Judgment or otherwise.

11. What Rights Do I Give Up If I Participate or Do Nothing?

For Settlement Class Members:

Unless you submit a timely and valid request for exclusion from the Settlement, you will remain a Settlement Class Member, and you will be bound by the terms of the Settlement, including releasing the "Released Claims" against Coolsys, Coolsys, Inc. and Released Parties below. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

Release of Claims: If you do not exclude yourself from this Settlement, you will give up any rights against Coolsys and Coolsys, Inc. regarding any claims related to unpaid wages, including minimum wages, regular wages, overtime and double time, improper calculation of overtime and double time wages, meal and rest breaks, reporting time pay, on-call pay, failure to timely pay wages during employment, separation pay violations, non-compliant wage statements, failure to properly record hours worked and/or paid, unfair business practices, and PAGA that arose during the Class Period. Specifically, upon the Final Approval Order and Final Judgment becoming Final, you hereby waive, release, discharge, and promise never to assert in any forum the following claims against Defendants, its respective subsidiaries, affiliates, officers, directors, shareholders, employees, attorneys, agents, assigns, members, investors, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, parents and attorneys. from all claims, demands, rights, liabilities and causes of action that were pled, based on the factual allegations therein, that arose during the Class Period with respect to the following claims: (a) failure to pay all minimum wages; (b) failure to pay all overtime wages; (c) failure to pay all wages; (d) failure to pay all reporting time pay; (e) failure to pay all on-call pay; (f) failure to provide timely and compliant meal

periods; (g) failure to provide timely and compliant rest breaks; (h) failure to provide accurate and itemized wage statements; (i) failure to timely pay all wages due to terminated/separated employees; and (j) all damages, penalties, interest and other amounts recoverable under said causes of action under California and federal law, to the extent permissible, including but not limited to the California Labor Code, the applicable Wage Orders, Business & Professions Code §§ 17200, et seq., and the Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq., based on the facts and causes of action as alleged in the Operative Complaint, and/or Plaintiff's notice submitted to the LWDA.

For Eligible Aggrieved Employees:

Upon Final Approval of the Settlement, each Eligible Aggrieved Employee will give up the following "PAGA Released Claims" against Coolsys, Coolsys, Inc. and Released Parties below. You will be bound by the release below and the judgment entered in this Action when the Court grants final approval of this Settlement.

Release of Claims as to Eligible Aggrieved Employees: Upon the Final Approval Order and Final Judgment becoming Final, you hereby waive, release, discharge the following claims against Coolsys, Coolsys, Inc. and its respective subsidiaries, affiliates, officers, directors, shareholders, employees, attorneys, agents, assigns, members, investors, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, parents and attorneys from any and all claims, for civil penalties under the California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq., that were asserted in the Operative Complaint or Plaintiff's notices to the LWDA based on the facts and/or allegations alleged therein. The PAGA Released Claims includes claims for PAGA civil penalties premised on California Labor Code §§ 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1194, 1197.1, 1998 including failure to pay unpaid wages, including minimum wages, regular wages, overtime and double time, improper calculation of overtime and double time wages, meal and rest breaks, reporting time pay, on-call pay, failure to timely pay wages during employment, separation pay violations, and non-compliant wage statements, that arose during the PAGA Period.

12. How Do I Exclude Myself from the Settlement as a Settlement Class Member?

If you are a Settlement Class Member and do not wish to participate in the Settlement, you may exclude yourself by mailing an Exclusion Form to the Settlement Administrator stating that you want to be excluded from the *Melinda James, et al. v. Coolsys Commercial & Industrial Solutions, Inc., et al.* settlement.

The written request for exclusion must: (1) include your name, address, and the last four digits of your social security number; (2) be addressed to the Settlement Administrator; and (3) be signed by you or your lawful representative. Your exclusion form must be postmarked no later than [45 DAYS AFTER MAILING] and returned to the Settlement Administrator at: 50 Corporate Park, Irvine, CA 92606 or 1-949-419-3446. If the Notice was re-mailed to you, your deadline is [REDACTED].

Notwithstanding the foregoing, no Eligible Aggrieved Employee may opt out of or be excluded from participating in the settlement of the PAGA claims alleged in the Action or from the PAGA Released Claims. Even if you exclude yourself from the class action portion of the settlement, you **cannot** exclude yourself from the PAGA portion of the settlement. Thus, you will still receive your portion of the PAGA payment, will release the PAGA Released Claims, and will be barred from asserting any claim against Defendant pursuant to the PAGA based on the PAGA Released Claims. If the Court grants final approval of the Settlement, upon the date the Final Judgment becomes Final, Eligible Aggrieved Employees are barred from pursuing any action under the PAGA regarding the PAGA Released Claims against Coolsys and Coolsys, Inc. as explained in Section 11.

The PAGA released claims do not include any claims for unpaid wages.

13. How Do I Object to the Settlement and Appear at the Final Approval and Fairness Hearing?

If you wish to object to the settlement, you may **either** (1) submit a timely written objection to the Settlement Administrator according to the procedures below, or (2) appear at the Final Approval Hearing to verbally object to the Settlement in person or through your own attorney at your own expense.

A written objection must contain: (1) your full name, address, and telephone number, and the name and address of your counsel, if any; (2) the words "Notice of Objection" or "Formal Objection"; (3) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (4) list identifying witness(es) you may call to testify at the Final Approval hearing; (5) provide true and correct copies of any exhibit(s) you intend to offer at the Final Approval hearing; (6) signed by you or your attorney; and (7) state whether you (or someone else on your behalf) intends to appear at the Final Approval hearing. Your written objection must be postmarked no later than [45 DAYS AFTER MAILING] and returned to the Settlement Administrator at: 50 Corporate Park, Irvine, CA 92606 or 1-949-419-3446. If the Notice was re-mailed to you, your deadline is [10 DAYS EXTENSION FROM INITIAL MAILING].

Class Counsel and Counsel for Coolsys and Coolsys, Inc. are permitted to respond in writing to your objection before the Final Approval hearing.

If you wish to appear at the Final Approval hearing to verbally object to the Settlement, please check the Court's website at <https://www.occourts.org> for COVID protocols and/or the procedure for remote appearances.

The Court will make a ruling on your objection at the Final Approval hearing. If the Court rejects your objection, you will be bound by the terms of the Settlement. You do not have to attend the Final Approval Hearing, but you may do so at your own expense. If you send a written objection, you do not have to come to Court to talk about it.

14. When Is the Final Approval and Fairness Hearing?

The Court will hold a Final Approval/Settlement Fairness Hearing in Department CX-102 of the California Superior Court for the County of Orange, located at 751 West Santa Ana Blvd., Santa Ana, CA 92701, on [TENTATIVE: Thursday, , 2021] at [2:00 PM], to determine whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will also be asked to approve Class Counsel's request for attorneys' fees and actual litigation costs, Plaintiff's Enhancement Award, Settlement Administration Costs, and the PAGA Payment to the LWDA and to Eligible Aggrieved Employees.

The Final Approval/Settlement Fairness Hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing, but you may do so at your own expense. Once final approval is granted by the Court, the Court will enter final judgment, and all Settlement Class Members who have not excluded themselves will be deemed to have waived the Released Claims set forth above. Notice of the final judgment will be on file with the Clerk of the Court. The notice of final judgment, and the final judgment will also be available through the Settlement Administrator at <http://www. .com>.

15. How Do I Get Additional Information?

This Notice provides a summary of the basic terms of the Settlement. The precise terms and conditions of the Settlement are contained in the Joint Stipulation of Class Action and PAGA Settlement, which is on file with the Clerk of the Court. Additionally, the pleadings and other records in this Action may be examined at any time during regular business hours at the Office of the Clerk of the California Superior Court for the County of Orange, located at 751 West Santa Ana Blvd., Santa Ana, CA 92701. You can also access and review the Court's docket in this case through

the Court's website at: <https://ocapps.occourts.org/online-services/case-access/>, by clicking on the "Civil Case & Document Access," accepting the terms of use, and entering in the case name or number *Melinda James, et al. v. Coolsys Commercial & Industrial Solutions, Inc., et al.*, Case No. 30-2020-01163014-CU-OE-CXC. The "Register of Action" tab will provide the docket entry of all documents filed in this Action.

In addition, this Notice, the Joint Stipulation of Class Action and PAGA Settlement, approval papers, and other documents in this case will also be available through the Settlement Administrator at [http://www. \[REDACTED\] .com](http://www. [REDACTED] .com).

If you have any questions, you may contact any of the attorneys listed below, or the Settlement Administrator, CPT Group, Inc., at 800-542-0900. When you call, please refer to the *Melinda James, et al. v. Coolsys Commercial & Industrial Solutions, Inc., et al.*, class action settlement.

CLASS COUNSEL
Jonathan M. Lebe Annaliz Loera LEBE LAW, APLC 777 S. Alameda Street, 2 nd Floor Los Angeles, CA 90021 Tel: (213) 444-1973 Fax: (213) 457-3092 jon@lebelaw.com annaliz@lebelaw.com

IF YOU HAVE ANY QUESTIONS ABOUT THE SETTLEMENT, YOU MAY CONTACT THE SETTLEMENT ADMINISTRATOR:

James v. Coolsys Commercial & Industrial Solutions, Inc., et al.,
c/o CPT Group, Inc.
50 Corporate Park
Irvine, CA 92606
Toll-Free Phone Number: 800-542-0900
Fax Number: 1-949-419-3446

PLEASE DO NOT CONTACT THE COURT OR OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT OR THE SETTLEMENT PROCESS.

BY ORDER OF THE COURT.

Jonathan M. Lebe (SBN 284605)
jon@lebelaw.com
Annaliz Loera (SBN 334129)
annaliz@lebelaw.com
LEBE LAW, APLC
777 S. Alameda Street, Second Floor
Los Angeles, CA 90021
Telephone: (213) 358-7046

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

Melinda James, individually and on behalf of
all others 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

**FIRST AMENDED CLASS ACTION
AND REPRESENTATIVE
COMPLAINT FOR VIOLATIONS
OF THE CALIFORNIA LABOR
CODE AND INDUSTRIAL
WELFARE COMMISSION WAGE
ORDER**

DEMAND FOR JURY TRIAL

1 Plaintiff Melinda James (“Plaintiff”), individually and on behalf of all others similarly
2 situated, alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff is an individual who worked as an employee for Coolsys Industrial and
5 Cool Systems Solutions, Inc., Source Refrigeration & HVAC, Inc., and Does 1 through 10,
6 inclusive (“Defendants”). Plaintiff seek to recover damages and civil penalties for all Class
7 Members during the Class Period (defined as April 6, 2016¹ up to and including the date of
8 commencement of trial) who incurred wage and hour violations and losses as hereinafter
9 described.

10 2. Through this action, Plaintiff alleges that Defendants have engaged in a systematic
11 pattern of wage and hour violations under the California Labor Code and Industrial Welfare
12 Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate unfair
13 competition.

14 3. On July 10, 2020, Plaintiff gave notice of these claims to the California Labor and
15 Workforce Development Agency (“LWDA”) and to the agent for service of process for each
16 Defendant. Plaintiff has not received any response from the LWDA indicating that it intends to
17 investigate these claims. Accordingly, Plaintiff has exhausted all notice requirements under the
18 PAGA.

19 **JURISDICTION AND VENUE**

20 4. This is a class action, pursuant to California Code of Civil Procedure § 382. The
21 monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits of
22 the Superior Court and will be established according to proof at trial.

23 5. This Court has jurisdiction over this action pursuant to the California Constitution,
24 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
25 given by statutes to other courts. The statutes under which this action is brought do not specify
26 any other basis for jurisdiction.

27
28 The statute of limitations for this matter was tolled pursuant to Cal. Rules of Court, Appendix I,
Emergency Rule No. 9.

6. The relief sought by Plaintiff on behalf of herself and the class members below exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial. The Court has personal jurisdiction over each of the parties because they are either citizens of this State, doing business in this State or otherwise have minimum contacts with this State.

7. Based on information and belief, Plaintiff alleges that this entire action arises solely under the laws of the State of California and applicable regulations of the health, safety and wages of the employees residing in the State of California. Plaintiff alleges, on information and belief, that no federal question is raised. Moreover, PAGA civil penalty actions are not subject to federal jurisdiction.

8. Venue is proper in this Court because, upon information and belief, Defendants reside, transact business or have offices in this county and the acts and omissions alleged herein took place in this county.

PARTIES

Plaintiff

9. Plaintiff Melinda James is a citizen of California who worked for Defendants within the past year. Throughout Plaintiff's employment, Plaintiff and Plaintiff's co-workers were subjected to wage theft.

Defendants

10. Defendant Coolsys Commercial & Industrial Solutions, Inc. is a corporation incorporated under the laws of California and headquartered in Orange County.

11. Defendant Source Refrigeration & HVAC, Inc. is an unknown entity.

12. Defendant Coolsys, Inc. is a corporation incorporated under the laws of Delaware.

13. Plaintiff is unaware of the true names or capacities of the defendants sued herein under the fictitious names DOES 1 through 10 but will seek leave of this Court to amend this Complaint and serve such fictitiously named defendants once their names and capacities become known.

14. Plaintiff is informed and believes, and thereon alleges, that each defendant acted in

1 all respects pertinent to this action as the agent of the other defendant, carried out a joint scheme,
2 business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally
3 attributable to the other defendant. Furthermore, defendants in all respects acted as the employer
4 and/or joint employer of Plaintiff and the aggrieved employees.

5 15. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts
6 and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES
7 1 through 10, acting as the agent or alter ego for the other, with legal authority to act on the other's
8 behalf. The acts of any and all Defendants were in accordance with, and represent, the official
9 policy of Defendants.

10 16. At all relevant times, Defendants, and each of them, acted within the scope of such
11 agency or employment, or ratified each and every act or omission complained of herein. At all
12 relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each
13 and all the other Defendants in proximately causing the damages herein alleged.

14 17. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants
15 is in some manner intentionally, negligently or otherwise responsible for the acts, omissions,
16 occurrences and transactions alleged herein.

17 **GENERAL ALLEGATIONS**

18 18. At all relevant times mentioned herein, Defendants employed Plaintiff and other
19 persons as employees.

20 19. Defendants employed Plaintiff during the Relevant Time Period.

21 20. Defendants failed to provide meal periods for each five hours of work to its
22 employees, including Plaintiff. Plaintiff and aggrieved employees often worked through meal
23 periods. Purported meal periods were often short, late or interrupted. Defendants also failed to
24 pay an additional hour's worth of premium pay on each occasion that it failed to provide lawful
25 meal periods as required by law.

26 21. Additionally, Defendants failed to authorize or permit ten-minute rest periods for
27 every four hours or major fraction thereof worked. Plaintiff and other aggrieved employees very
28

1 often did not receive any rest breaks. Defendants also failed to pay an additional hour's worth of
2 premium pay on each occasion that it failed to provide lawful rest periods as required by law.

3 22. Additionally, Defendants have subjected Plaintiff and other aggrieved employees
4 to a uniform policy and practice of unlawful time rounding and manipulation. That is, Defendants
5 rounded Plaintiff's and other aggrieved employees' hours worked, or otherwise manipulated the
6 reported hours, which over time, unlawfully favored Employer and resulted in time loss to the
7 employees. This rounding policy was not neutral on its face or in application and resulted in
8 cumulative loss of time to the employees.

9 23. Defendants had the ability to pay for the precise hours worked but opted instead to
10 utilize the rounding policy with no apparent benefit other than to benefit Defendants and deprive
11 employees of payment for all hours worked. As a result of the rounding practices and also the off
12 the clock work during meal periods, Plaintiff and aggrieved employees were not paid all minimum
13 and regular wages for all hours worked. When the employees worked overtime, the rounding
14 policy and time manipulation policy also resulted in the failure to pay all overtime hours worked.

15 24. Defendants failed to pay all reporting time pay to Plaintiff and aggrieved
16 employees. For example, on various dates, Plaintiff received only 2 or 3 hours of reporting time
17 pay instead of half of the hours of her normal shift.

18 25. Defendants failed to provide accurate and complete wage statements by failing to
19 include all the required information pursuant to Labor Code section 226, including but not limited
20 to failing to include the correct number of hours worked and wages earned and each employer's
21 legal name and address.

22 26. Defendants failed to timely pay final wages to Plaintiff and aggrieved employees.
23 For example, according to Defendants' records, Plaintiff's employment was terminated on March
24 11, 2020 but, also according to Defendants' records, the pay date for her final wages was March
25 13, 2020.

26 27. Therefore, Plaintiff is informed and believes, and thereon alleges, that Defendants
27 have increased their profits by violating California wage and hour laws by, among other things:

28 (a) Failing to pay all wages for all hours worked, including minimum and

overtime wages;

(b) Failing to pay overtime and doubletime wages at the proper rates;

(c) Failing to timely pay all earned wages;

(d) Failing to pay reporting time pay;

(e) Failing to provide meal periods or compensation in lieu thereof;

(f) Failing to authorize or permit rest breaks or provide compensation in lieu thereof;

(g) Failing to provide accurate itemized wage statements;

(h) Failing to pay all wages due upon separation of employment; and

(i) Whether Defendants engaged in unfair business practices in violation of Business & Professions Code §§ 17200, *et seq.*

28. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf of himself and all others similarly situated in California to recover, among other things, unpaid wages and benefits, interest, attorneys' fees, costs and expenses and penalties pursuant to Labor Code §§ 201-203, 204, 210, 221, 226, 226.7, 510, 511, 512, 1182.12, 1194, 1194.2, 1197 and 1198.

29. Plaintiff suffered losses as detailed above as a result of these practices and is therefore an aggrieved employee under Labor Code section 2699(c). Plaintiff is informed and believe that because the Defendants used identical procedures for all employees, there are many other aggrieved employees who suffered the above violations including underpayment of wages, non-compliant meal periods and rest breaks, failure to provide sick leave, failure to reimburse all reasonable and necessary business expenses, and derivative violations for inaccurate pay and wage statements, and failure to timely pay all wages due to employees who were separated or were terminated from employment during the applicable limitations period, and for which recovery under PAGA is owed.

///

1 **CLASS ACTION ALLEGATIONS**

2 30. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of himself
3 and all others similarly situated who were affected by Defendants' Labor Code, Business and
4 Professions Code §§ 17200 and IWC Wage Order violations.

5 31. All claims alleged herein arise under California law for which Plaintiff seeks relief
6 authorized by California law.

7 32. Plaintiff's proposed Class consists of and is defined as follows:

8 Class

9 All current or former California non-exempt hourly employees employed by
10 Defendants from April 6, 2016 until the entry of judgment,

11 33. Plaintiff also seeks to certify the following Subclass of employees:

12 Waiting Time Subclass

13 All members of the Class who separated their employment from Defendants from
14 April 6, 2017 up until the entry of judgment.

15 34. Members of the Class and Subclass described above will be collectively referred to
16 as "class members." Plaintiff reserves the right to establish other or additional subclasses, or
17 modify any Class or Subclass definition, as appropriate based on investigation, discovery and
18 specific theories of liability.

19 35. This action has been brought and may properly be maintained as a class action
20 under the California Code of Civil Procedure § 382 because there are common questions of law
21 and fact as to the Class that predominate over questions affecting only individual members
22 including, but not limited to:

23 (a) Whether Defendants failed to compensate Plaintiff and class members to
24 for all hours works as a result of the illegal rounding and manipulation, resulting in
25 a failure to pay all minimum wages and overtime wages;

26 (b) Whether Defendants paid Plaintiff and class members overtime and
27 doubletime compensation at the proper rates;
28

- 1 (c) Whether Defendants failed to timely pay all wages earned by Plaintiff and
2 class members;
- 3 (d) Whether Defendants paid Plaintiff and class members reporting time pay;
- 4 (e) Whether Defendants deprived Plaintiff and class members of compliant
5 meal periods or required Plaintiff and class members to work through meal periods
6 without compensation;
- 7 (f) Whether Defendants deprived Plaintiff and class members of compliant rest
8 breaks;
- 9 (g) Whether Defendants failed to timely pay Plaintiff and former class members
10 all wages due upon termination or within 72 hours of resignation;
- 11 (h) Whether Defendants failed to furnish Plaintiff and class members with
12 accurate, itemized wage statements; and
- 13 (i) Whether Defendants engaged in unfair business practices in violation of
14 Business & Professions Code §§ 17200, *et seq.*

15
16
17 36. There is a well-defined community of interest in this litigation and the Class is
18 readily ascertainable:

- 19 (a) Numerosity: The members of the Class are so numerous that joinder of all
20 members is impractical. Although the members of the Class are unknown
21 to Plaintiff at this time, on information and belief, the Class is estimated to
22 be greater than 100 individuals. The identity of the class members are
23 readily ascertainable by inspection of Defendants' employment and payroll
24 records.
- 25 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the
26 claims (or defenses, if any) of the Class because Defendants' failure to
27 comply with the provisions of California wage and hour laws entitled each
28 class member to similar pay, benefits and other relief. The injuries

1 sustained by Plaintiff are also typical of the injuries sustained by the Class
2 because they arise out of and are caused by Defendants' common course of
3 conduct as alleged herein.

4 (c) Adequacy: Plaintiff is qualified to, and will fairly and adequately represent
5 and protect the interests of all members of the Class because it is in his best
6 interest to prosecute the claims alleged herein to obtain full compensation
7 and penalties due to him and the Class. Plaintiff's attorneys, as proposed
8 class counsel, are competent and experienced in litigating large employment
9 class actions and are versed in the rules governing class action discovery,
10 certification and settlement. Plaintiff has incurred and, throughout the
11 duration of this action, will continue to incur attorneys' fees and costs that
12 have been and will be necessarily expended for the prosecution of this
13 action for the substantial benefit of each class member.

14 (d) Superiority: The nature of this action makes the use of class action
15 adjudication superior to other methods. A class action will achieve
16 economies of time, effort and expense as compared with separate lawsuits,
17 and will avoid inconsistent outcomes because the same issues can be
18 adjudicated in the same manner and at the same time for each Class. If
19 appropriate this Court can, and is empowered to, fashion methods to
20 efficiently manage this case as a class action.

21 (e) Public Policy Considerations: Employers in the State of California and
22 other states violate employment and labor laws every day. Current
23 employees are often afraid to assert their rights out of fear of direct or
24 indirect retaliation. Former employees are fearful of bringing actions
25 because they believe their former employers might damage their future
26 endeavors through negative references and/or other means. Class actions
27 provide the class members who are not named in the complaint with a
28

1 type of anonymity that allows for the vindication of their rights at the
2 same time as affording them privacy protections.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PAY MINIMUM WAGES**

5 **(Violation of Labor Code §§ 1194, 1194.2, and 1197; Violation of IWC Wage Order § 3)**

6 37. Plaintiff hereby re-allege and incorporate by reference all paragraphs above as
7 though fully set forth herein.

8 38. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
9 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
10 wage than the minimum so fixed is unlawful.

11 39. During the relevant time period, Defendants rounded time to the nearest quarter
12 hour. Defendant's rounding policy was not fair and neutral, and it resulted in underpayment to
13 Plaintiff and class members. To the extent these hours do not qualify for the payment of
14 overtime or doubletime, Plaintiff and class members were not being paid at least minimum wage
15 for their work.

16 40. During the relevant time period, Defendants regularly failed to pay at least
17 minimum wage to Plaintiff and class members for all hours worked pursuant to Labor Code
18 §§ 1194 and 1197.

19 41. Defendants' failure to pay Plaintiff and class members the minimum wage as
20 required violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and class
21 members are entitled to recover the unpaid balance of their minimum wage compensation as
22 well as interest, costs and attorney's fees.

23 42. Pursuant to Labor Code § 1194.2, Plaintiff and class members are entitled to
24 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
25 thereon.

26
27 ///

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

6
7
8
9
10
11
12
13
14
15
16
17
18

8
9
0
1
2
3
4
5
6
7
8

21
22
23
24
25
26
27
28

24
25
26
27
28

28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

20
21
22
23
24
25
26
27
28

20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8

22
23
24
25
26
27
28

24
25
26
27
28

26
27
28

1 of the employee's usual or scheduled day's work, the employee shall be paid for half the usual
2 or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours
3 at the employee's regular rate of pay, which shall not be less than the minimum wage. Section
4 5 of the applicable Wage Order denominates this as "Reporting Time Pay."

5 58. During the Class Period, Plaintiff and class members were required to report to
6 work but were not put to work and would be sent home early. Accordingly, for those times that
7 Plaintiffs and class members were required to report to work but were not put to work or were
8 furnished with less than half of their usual scheduled day's work, Plaintiffs and class members
9 are entitled to recover from Defendant compensation for half a day's work, plus interest thereon,
10 together with their reasonable attorneys' fees and costs.

11 **FIFTH CAUSE OF ACTION**

12 **FAILURE TO PROVIDE MEAL PERIODS**

13 **(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order)**

14 59. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
15 though fully set forth herein.

16 60. Labor Code § 226.7 provides that no employer shall require an employee to work
17 during any meal period mandated by the IWC Wage Orders.

18 61. Section 11 of the applicable IWC Wage Order states, "no employer shall employ
19 any person for a work period of more than five (5) hours without a meal period of not less than
20 30 minutes, except that when a work period of not more than six (6) hours will complete the
21 day's work the meal period may be waived by mutual consent of the employer and the
22 employee."

23 62. Labor Code § 512(a) provides that an employer may not require, cause or permit
24 an employee to work for a period of more than five (5) hours per day without providing the
25 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if
26 the total work period per day of the employee is not more than six (6) hours, the meal period may
27 be waived by mutual consent of both the employer and the employee.
28

1 63. Labor Code § 512(a) also provides that an employer may not employ an employee
2 for a work period of more than ten (10) hours per day without providing the employee with a
3 second meal period of not less than thirty (30) minutes, except that if the total hours worked is
4 no more than twelve (12) hours, the second meal period may be waived by mutual consent of the
5 employer and the employee only if the first meal period was not waived.

6 64. During the relevant time period, Plaintiff and class members did not receive
7 compliant meal periods for each five hours worked per day and Defendants also routinely failed
8 to provide Plaintiff and class members with a second, off-the-clock meal break for shifts lasting
9 longer than ten hours.

10 65. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
11 an employer to pay an employee one additional hour of pay at the employee's regular rate of
12 compensation for each work day that a meal period is not provided.

13 66. At all relevant times, Defendants failed to pay Plaintiff and class members all
14 meal period premiums due for meal period violations pursuant to Labor Code § 226.7(b) and
15 section 11 of the applicable IWC Wage Order.

16 67. As a result of Defendants' failure to pay Plaintiff and class members an additional
17 hour of pay for each day a meal period was not provided, Plaintiff and class members suffered
18 and continue to suffer a loss of wages and compensation.

19 **SIXTH CAUSE OF ACTION**

20 **FAILURE TO PERMIT REST BREAKS**

21 **(Violation of Labor Code §§ 226.7; Violation of IWC Wage Order)**

22 68. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
23 though fully set forth herein.

24 69. Labor Code § 226.7(a) provides that no employer shall require an employee to
25 work during any rest period mandated by the IWC Wage Orders.

26 70. Section 12 of the applicable IWC Wage Order states "every employer shall
27 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
28

1 the middle of each work period” and the “authorized rest period time shall be based on the total
2 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
3 thereof” unless the total daily work time is less than three and one-half (3½) hours.

4 71. During the relevant time period, Plaintiff and class members did not receive a ten
5 (10) minute rest period for every four (4) hours or major fraction thereof worked.

6 72. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires
7 an employer to pay an employee one additional hour of pay at the employee’s regular rate of
8 compensation for each workday that the rest period is not provided.

9 73. At all relevant times, Defendants failed to pay Plaintiff and class members all rest
10 period premiums due for rest period violations pursuant to Labor Code § 226.7(b) and section
11 12 of the applicable IWC Wage Order.

12 74. As a result of Defendants’ failure to pay Plaintiff and class members an additional
13 hour of pay for each day a rest period was not provided, Plaintiff and class members suffered
14 and continue to suffer a loss of wages and compensation.

15
16 **SEVENTH CAUSE OF ACTION**
17 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
18 **(Violation of Labor Code § 226; Violation of IWC Wage Order)**

19 75. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
20 though fully set forth herein.

21 76. Labor Code § 226(a) requires Defendants to provide each employee with an
22 accurate wage statement in writing showing nine pieces of information, including: (1) gross
23 wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned
24 and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
25 provided that all deductions made on written orders of the employee may be aggregated and
26 shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the
27 employee is paid, (7) the name of the employee and the last four digits of his or her social
28 security number or an employee identification number other than a social security number, (8)

1 the name and address of the legal entity that is the employer, and (9) all applicable hourly rates
2 in effect during the pay period and the corresponding number of hours worked at each hourly
3 rate by the employee.

4 77. During the relevant time period, Defendants have knowingly and intentionally
5 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff
6 and class members. The deficiencies include, among other things, the failure to include the
7 correct number of hours worked and wages earned.

8 78. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff
9 and class members have suffered injury and damage to their statutorily protected rights.
10 Specifically, Plaintiff and class members have been injured by Defendants' intentional violation
11 of California Labor Code § 226(a) because they were denied both their legal right to receive,
12 and their protected interest in receiving, accurate itemized wage statements under California
13 Labor Code § 226(a). Plaintiff has had to file this lawsuit in order to determine the extent of the
14 underpayment of wages, thereby causing Plaintiff to incur expenses and lost time. Plaintiff
15 would not have had to engage in these efforts and incur these costs had Defendants provided the
16 accurate wages earned. This has also delayed Plaintiff's ability to demand and recover the
17 underpayment of wages from Defendants.

18 79. California Labor Code § 226(a) requires an employer to pay the greater of all
19 actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred,
20 and one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods,
21 plus attorney's fees and costs, to each employee who was injured by the employer's failure to
22 comply with California Labor Code § 226(a).

23 80. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff and
24 class members from knowing, understanding and disputing the wages paid to them, and resulted
25 in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
26 intentional failure to comply with California Labor Code § 226(a), Plaintiff and class members
27 have suffered an injury, and the exact amount of damages and/or penalties is all in an amount to
28

1 be shown according to proof at trial.

2 81. Plaintiff and class members are also entitled to injunctive relief under California
3 Labor Code § 226(h), compelling Defendants to comply with California Labor Code § 226, and
4 seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

5 **EIGHTH CAUSE OF ACTION**

6 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT AND**

7 **WITHIN THE REQUIRED TIME**

8 **(Violation of Labor Code §§ 201, 202 and 203; Violation of IWC Wage Order)**

9 82. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
10 though fully set forth herein.

11 83. California Labor Code §§ 201 and 202 provide that if an employer discharges an
12 employee, the wages earned and unpaid at the time of discharge are due and payable
13 immediately, and that if an employee voluntarily leaves his employment, his wages shall become
14 due and payable not later than seventy-two (72) hours thereafter, unless the employee has given
15 seventy-two (72) hours previous notice of his intention to quit, in which case the employee is
16 entitled to his wages at the time of quitting.

17 84. During the relevant time period, Defendants willfully failed to pay Plaintiff and
18 Waiting Time Subclass members all their earned wages upon termination including, but not
19 limited to, proper minimum wages, Reporting Time Pay, and overtime and doubletime
20 compensation, either at the time of discharge or within seventy-two (72) hours of their leaving
21 Defendants' employ.

22 85. Defendants' failure to pay Plaintiff and Waiting Time Subclass members all their
23 earned wages at the time of discharge or within seventy-two (72) hours of their leaving
24 Defendants' employ is in violation of Labor Code §§ 201 and 202.

25 86. California Labor Code § 203 provides that if an employer willfully fails to pay
26 wages owed immediately upon discharge or resignation in accordance with Labor Code §§ 201
27 and 202, then the wages of the employee shall continue as a penalty from the due date at the
28

1 same rate until paid or until an action is commenced; but the wages shall not continue for more
2 than thirty (30) days.

3 87. Plaintiff and Waiting Time Subclass members are entitled to recover from
4 Defendants the statutory penalty which is defined as Plaintiff's and Waiting Time Subclass
5 members' regular daily wages for each day they were not paid, at their regular hourly rate of
6 pay, up to a thirty (30) day maximum pursuant to Labor Code § 203.

7 **NINTH CAUSE OF ACTION**

8 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.**

9 88. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
10 though fully set forth herein.

11 89. Defendants' conduct, as alleged herein, has been and continues to be unfair,
12 unlawful and harmful to Plaintiff and class members. Plaintiff seek to enforce important rights
13 affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

14 90. Defendants' activities, as alleged herein, violate California law and constitute
15 unlawful business acts or practices in violation of California Business and Professions Code
16 §§ 17200, *et seq.*

17 91. A violation of Business and Professions Code §§ 17200, *et seq.* may be
18 predicated on the violation of any state or federal law.

19 92. Defendants' policies and practices have violated state law in at least the following
20 respects:

21 (a) Failing to pay all minimum wages owed to Plaintiff and class members in
22 violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197;

23 (b) Failing to pay all overtime and doubletime wages to Plaintiff and class members
24 in violation of Labor Code §§ 510, 511, 1194 and 1198;

25 (c) Failing to timely pay all wages earned by Plaintiff and class members in violation
26 of Labor Code §§ 204, and 210;

27 (d) Deducting the wages of Plaintiff and class members in violation of Labor Code
28

1 § 221;

2 (e) Failing to provide timely meal periods without paying Plaintiff and class
3 members premium wages for every day said meal periods were not provided in violation of
4 Labor Code §§ 226.7 and 512;

5 (f) Failing to authorize or permit rest breaks without paying Plaintiff and class
6 members premium wages for every day said rest breaks were not authorized or permitted in
7 violation of Labor Code § 226.7;

8 (g) Failing to provide Plaintiff and class members with accurate itemized wage
9 statements in violation of Labor Code § 226; and

10 (e) Failing to timely pay all earned wages to Plaintiff and Waiting Time Subclass
11 members upon separation of employment in violation of Labor Code §§ 201, 202 and 203.

12 93. Defendants intentionally avoided paying Plaintiff and class members' wages and
13 monies, thereby creating for Defendants an artificially lower cost of doing business in order to
14 undercut their competitors and establish and gain a greater foothold in the marketplace.

15 94. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiff and class
16 members are entitled to restitution of the wages unlawfully withheld and retained by Defendants
17 during a period that commences four years prior to the filing of the Complaint, an award of
18 attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and other applicable laws; and an
19 award of costs.

20 **TENTH CAUSE OF ACTION**

21 **VIOLATION OF THE PRIVATE ATTORNEY GENERAL ACT (LABOR CODE § 2698**

22 **ET SEQ.)**

23 95. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
24 though fully set forth herein as well as the allegations of Plaintiff's PAGA notice attached hereto.

25 96. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
26 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
27 ("LWDA") or any of its departments, divisions, commissions, boards, agencies or employees for
28

1 violation of the code may, as an alternative, be recovered through a civil action brought by an
2 aggrieved employee on behalf of herself and other current or former employees pursuant to the
3 procedures specified in Labor Code § 2699.3.

4 97. Defendants' conduct violates numerous Labor Code sections including, but not
5 limited to, the following:

- 6 (a) Violation of Labor Code §§ 201, 202, 203, 204, 210, 510, 558, 1194, 1197 and
7 1198 for failure to timely pay all earned wages (including minimum and overtime
8 wages and reporting time pay) owed to Plaintiff and other aggrieved employees
9 during employment and upon separation of employment as herein alleged;
10 (b) Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
11 Plaintiff and other aggrieved employees and failure to pay premium wages for
12 missed meal periods as herein alleged;
13 (c) Violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and
14 other aggrieved employees and failure to pay premium wages for missed rest
15 periods as herein alleged; and
16 (d) Violation of Labor Code § 226 for failure to provide accurate itemized wage
17 statements to Plaintiff and other aggrieved employees as herein alleged.

18 98. Further, Labor Code § 558(a) provides "any employer or other person acting on
19 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
20 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
21 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for
22 each pay period for which the employee was underpaid in addition to an amount sufficient to
23 recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for
24 each underpaid employee for each pay period for which the employee was underpaid in addition
25 to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this
26 section shall be paid to the affected employee."

27 99. As set forth above, Defendants have violated numerous provisions of the Labor
28

1 Code regulating hours and days of work as well as the IWC Wage Orders. Accordingly, Plaintiff
2 seek the remedies set forth in Labor Code § 558 for herself, the underpaid employees, and the
3 State of California.

4 100. Plaintiff is an “aggrieved employee” because she was employed by the alleged
5 violator and had one or more of the alleged violations committed against her, and therefore is
6 properly suited to represent the interests of all other aggrieved employees.

7 101. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3
8 as to Defendants and is therefore able to pursue a claim for penalties on behalf of herself and all
9 other aggrieved employees under PAGA. Attached hereto as **Exhibit 1** is a true and correct
10 copy of Plaintiff’s PAGA notice.

11 102. For all provisions of the Labor Code except those for which a civil penalty is
12 specifically provided, Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred
13 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
14 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
15 period in which Defendants violated these provisions of the Labor Code.

16 103. Labor Code section 226.3 provides for civil penalties for violations of Section
17 226. The civil penalty is \$250 for the initial violation and \$1,000 for each subsequent violation.

18 104. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
19 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
20 cited above.

21 105. Plaintiff, as a representative of the general public, seeks to recover all Labor Code
22 section 2699(f)(2) civil penalties for each Labor Code violation alleged herein, according to
23 proof, as to those penalties otherwise only available in public agency enforcement actions. Funds
24 recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered
25 provided to the LWDA on behalf of the State of California.

26 106. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred
27 herein.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. For certification of this action as a class action, including certifying the Class and Subclass alleged by Plaintiff;
2. For appointment of Melinda James as the class representative;
3. For appointment of Lebe Law, APLC as class counsel for all purposes;
4. For compensatory damages in an amount according to proof with interest thereon;
5. For economic and/or special damages in an amount according to proof with interest thereon;
6. To pay all minimum, regular, overtime wages, and reporting time pay for all hours worked as required by law in an amount according to proof;
7. To pay all meal period premiums for failure to provide off-duty meal periods as required by law, in an amount according to proof;
8. To pay all rest period premiums for failure to provide paid 10-minute rest periods as required by law, in an amount according to proof;
9. For waiting time penalties of 30-days' pay pursuant to Labor Code § 203 related to Defendants' failure to timely pay all wages due to Plaintiff and all other terminated or separated Class Members, distributed in a fair and equitable manner in an amount according to proof;
10. For reasonable attorneys' fees under the California Labor Code and any other statutes, including California Labor Code of Civil Procedure § 1021.5 and/or California Labor Code § 2699(g);
11. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Order;
12. For liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon pursuant to Labor Code § 1194.2;
13. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair

1 or fraudulent and, therefore, constituting unfair competition under Business and Professions Code
2 §§ 17200, *et seq.*;

3 14. For an award of damages in the amount of unpaid compensation including, but not
4 limited to, unpaid wages, benefits and penalties, including interest thereon;

5 15. For costs of the suit incurred herein;

6 16. For pre- and post-judgment interest at the prevailing statutory rate;

7 17. For civil penalties pursuant to PAGA, 75% of which will be paid to the Labor
8 Workforce Development Agency and 25% of which will be distributed to the aggrieved
9 employees;

10 18. For such equitable relief as the Court may deem just and proper; and

11 19. For such other relief as the Court may deem proper.

12
13 DATED: July 23, 2021

LEBE LAW, APLC

14
15
16 By: 

Jonathan M. Lebe

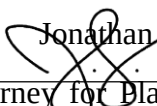
17 Attorney for Plaintiff Melinda James, Individually
18 and on behalf of all others similarly situated

19
20 **DEMAND FOR JURY TRIAL**

21 Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.

22
23 DATED: July 23, 2021

LEBE LAW, APLC

24
25 By: 

Jonathan M. Lebe

26 Attorney for Plaintiff Melinda James, Individually
27 and on behalf of all others similarly situated
28

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California, I am over the age of
3 eighteen years and not a party to the within entitled action; my business address is 777 S.
Alameda Street, Los Angeles, CA 90021.

4 On July 23, 2021 I served the foregoing:

5 **FIRST AMENDED CLASS ACTION AND REPRESENTATIVE COMPLAINT**
6 **FOR VIOLATIONS OF THE CALIFORNIA LABOR CODE AND INDUSTRIAL**
7 **WELFARE COMMISSION WAGE ORDER**

8 on the interested parties, by placing a true copy thereof, by the method of service
9 specified below:

10 Christine D. Baran (State Bar No. 158603)

11 Cbaran@fisherphillips.com

12 Ashton M. Riley (State Bar No. 310528)

13 Ariley@fisherphillips.com

14 Fisher & Phillips LLP

15 2050 Main Street, Suite 1000

16 Irvine, CA 92614

17 ☒ (VIA ELECTRONIC SERVICE) Based on a court order or an agreement of the parties to
18 accept service by electronic transmission, I caused the documents to be sent to the persons
19 at the electronic notification addresses listed above. I did not receive, within a reasonable
20 time after the transmission, any electronic message or other indication that the
21 transmission was unsuccessful.

22 ☒ (STATE) I declare under penalty of perjury under the laws of the State of California that
23 the above is true and correct.

24 Dated: July 23, 2021

25 Annaliz Loera
26 Annaliz Loera

**[COMPLETE THIS FORM ONLY IF YOU CHOOSE
NOT TO PARTICIPATE IN THIS SETTLEMENT]**

REQUEST FOR EXCLUSION FROM CLASS ACTION SETTLEMENT

James v. Coolsys Commercial & Industrial Solutions, Inc., et al.,
Orange County Superior Court Case No. 30-2020-01163014-CU-OE-CXC

INSTRUCTIONS: TO BE EXCLUDED (OPT OUT) OF THE SETTLEMENT, YOU MUST COMPLETE, SIGN, AND MUST POSTMARK THIS FORM NO LATER THAN 45 DAYS AFTER [INITIAL MAILING].

James v. Coolsys Commercial & Industrial Solutions, Inc., et al.,
c/o CPT Group, Inc.
50 Corporate Park
Irvine, CA 92606
Toll-Free Phone Number: 800-542-0900
Fax Number: 1-949-419-3446

Please fill in all of the following information (type or print):

NAME (First, Middle, Last): _____

STREET ADDRESS: _____

CITY, STATE, ZIP CODE: _____

FORMER NAMES (if any): _____

LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER: _____

I [insert your name]_____ wish to be excluded from the settlement class in *James v. Coolsys Commercial & Industrial Solutions, Inc., et al.*, Orange County Superior Court Case No. 30-2020-01163014-CU-OE-CXC. I understand I will not receive money from the class settlement.

I understand that by signing this side of the form, I voluntarily choose to “opt out” of the proposed Settlement of this Class Action. I understand that by opting out, I may not accept any money allocated for me in the proposed Settlement. On the other hand, I also understand that if I wish to assert any claims related to those set forth in this lawsuit, I will have to do so separately. I understand that any such claims are subject to strict time limits, known as statutes of limitations, which restrict the time within which I may file any such action. I understand that I should consult with an attorney if I wish to obtain advice regarding my rights with respect to this Settlement or my choice to opt out of the Settlement. I have not been coerced by anyone to opt out of this Class Action, and I choose to opt out of my own free will.

I declare under penalty of perjury under the laws of the State of California that the forgoing is true and correct.

Date: _____

Print name: _____

Signature: _____