

AEGIS LAW FIRM, PC
SAMUEL A. WONG, State Bar No. 217104
KASHIF HAQUE, State Bar No. 218672
JESSICA L. CAMPBELL, State Bar No. 280626
CHELSEA D. HOLLINS, State Bar No. 305229
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: (949) 379-6250
Facsimile: (949) 379-6251
Email: chollins@aegislawfirm.com

Attorneys for Plaintiff David Chavez, individually,
and on behalf of all others similarly situated

[Additional counsel listed on following page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF IMPERIAL**

DAVID CHAVEZ, individually and on behalf of
all others similarly situated,

Plaintiff,

vs.

6TH STREET COOLING, LLC; WESTERN
PRECOOLING SYSTEMS; and DOES 1 through
20, inclusive,

Defendants.

Case No. ECU001493

*Assigned for all purposes to
Judge L. Brooks Anderholt
Dept. 9*

JOINT STIPULATION OF SETTLEMENT

1 **LightGabler**

By: Jonathan Fraser Light (State Bar #101049)

2 Michael H. Brody (State Bar #238757)

3 760 Paseo Camarillo, Suite 300

Camarillo, CA 93010

4 (805) 248-7208

(805) 248-7209 (fax)

5 jlight@lightgablerlaw.com

6 mbrody@lightgablerlaw.com

7 Attorneys for Defendants

6th Street Cooling, LLC and Western Precooling

8 Systems

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
2 the Court pursuant to the California Rules of Court, that the Settlement of this Action shall be
3 effectuated upon and subject to the following terms and conditions. Capitalized terms used herein
4 shall have the meanings set forth in Article I or as defined elsewhere in this Joint Stipulation of
5 Settlement ("Agreement" or "Settlement").

6 This Agreement is made by and between Named Plaintiff David Chavez ("Named Plaintiff")
7 and the Class Members, on the one hand, and Defendants 6th Street Cooling, LLC and Western
8 Precooling Systems ("Defendants"), on the other hand. Named Plaintiff and Defendants collectively
9 are referred to in this Agreement as "the Parties."

10 The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and
11 concluded by agreement of Defendants to pay the settlement amount of Five Hundred Ninety Three
12 Thousand Five Hundred Dollars (\$593,500.00) as provided in Section 3.06(a) below ("Gross
13 Settlement Amount") pursuant to the terms and conditions of this Agreement and for the
14 consideration set forth herein, including but not limited to, a release of all claims by Named Plaintiff
15 and the Class Members as set forth herein.

16 **ARTICLE I**

17 **DEFINITIONS**

18 Unless otherwise defined herein, the following terms used in this Agreement shall have the
19 meanings ascribed to them as set forth below:

20 a. "Action" means the action described as follows: *David Chavez, individually and on*
21 *behalf of all others similarly situated v. 6th Street Cooling, LLC, Western Precooling Systems.*; and
22 DOES 1 through 20, inclusive," Case No. ECU001493, commenced on July 23, 2020, in the Superior
23 Court of the State of California for the County of Imperial.

24 b. "Agreement" means this Joint Stipulation of Settlement, including the attached
25 Exhibit(s).

26 c. "Class" means all current and former non-exempt, hourly employees who are or were
27 employed by Defendant 6th Street Cooling, LLC in California at any time during the Class Period.

28 d. "Class Counsel" means the attorneys for the Class and the Class Members, who are:

AEGIS LAW FIRM, PC
Kashif Haque
Samuel A. Wong
Jessica L. Campbell
Chelsea D. Hollins
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: (949) 379-6250
Facsimile: (949) 379-6251

e. "Class List" means a list based on Defendants' business records that identifies each Class Member's name, last known home or mailing address, Social Security number or, as applicable, other taxpayer identification number, dates of employment, and the number of Qualifying Workweeks worked during the Class Period.

f. "Class Member(s)" means all members of the Class.

g. "Class Period" means April 6, 2016 through June 1, 2021.

h. "Court" means the California Superior Court for the County of Imperial, where the Action is currently pending.

i. "Date of Finality" means the later of the following: (1) the date the Final Order is signed if no objections are filed to the Settlement; (2) if objections are filed and overruled, and no appeal is taken of the Final Order, sixty-five (65) days after the Final Order; or (3) if an appeal or other judicial review is taken from the Court's overruling of objections to the settlement, ten (10) days after the appeal is withdrawn or after an appellate decision affirming the Final Order becomes final with no right to pursue further remedies or relief.

j. "Defendants" means Defendants 6th Street Cooling, LLC and Western Precooling Systems.

k. "Defense Counsel" means counsel for Defendants:

LightGabler
Jonathan Fraser Light
Michael H. Brody
760 Paseo Camarillo, Suite 300
Camarillo, CA 93010
(805) 248-7208
(805) 248-7209 (fax)
jlight@lightgablerlaw.com
mbrody@lightgablerlaw.com

1
2 l. "Disposition" means the method by which the Court approves the terms of the
3 Settlement and retains jurisdiction over its enforcement, implementation, construction,
4 administration, and interpretation.

5 m. "Final Order Approving Settlement of Class Action" or "Final Order" means the final
6 formal court order signed by the Court following the Final Fairness and Approval Hearing in
7 accordance with the terms herein, approving this Agreement.

8 n. "Gross Settlement Amount" means Five Hundred Ninety Three Thousand Five
9 Hundred Dollars and Zero Cents (\$593,500.00) to be paid by Defendants as provided by this
10 Agreement to settle this Action. All claims of the Class and all administration costs, attorney's fees
11 and costs, and Incentive Awards, pursuant to Section 3.07(a) below, shall be paid out of the Gross
12 Settlement Amount. The employer's share of payroll taxes arising from the payments made under
13 this settlement shall be paid by Defendants separate from and in addition to the Gross Settlement
14 Amount. The Gross Settlement Amount is subject to a pro rata increase pursuant to Section 3.04(e)
15 below. No part of the Gross Settlement Amount shall revert to Defendants.

16 o. "Incentive Award" means a monetary amount of up to Ten Thousand Dollars
17 (\$10,000.00) for the Named Plaintiff, subject to Court approval, in recognition of his effort and work
18 in prosecuting the Action on behalf of Class Members, and for his general release of claims.

19 p. "Individual Settlement Payment(s)" means each Participating Class Member's
20 respective share of the Net Settlement Amount. Individual Settlement Payments will be determined
21 by the calculations provided in this Agreement.

22 q. "LWDA" means The State of California Labor and Workforce Development Agency.

23 r. "LWDA Payment" means 75% of the \$20,000 allocated to the settlement of PAGA
24 claims which, subject to Court approval, will be paid to the LWDA pursuant to Section 3.07(e) of
25 this Agreement, as provided for below.

26 s. "Motion for Final Approval" means Plaintiff's submission of a written motion,
27 including any evidence as may be required for the Court to conduct an inquiry into the fairness of

28 //

1 the Settlement as set forth in this Agreement, to conduct a Final Fairness and Approval
2 Hearing, and to enter a Final Order in this Action.

3 t. "Motion for Preliminary Approval" means Plaintiff's submission of a written motion,
4 including any evidence as may be required for the Court to grant preliminary approval of the
5 Settlement as required by Rule 3.769 of the California Rules of Court.

6 u. "Named Plaintiff" means David Chavez.

7 v. "Net Settlement Amount" means the Gross Settlement Amount less Court-approved
8 administration costs, Class Counsels' attorney's fees and costs, Incentive Awards, and LWDA
9 Payment, pursuant to Section 3.07(a)-(f) below.

10 w. "Non-Participating Class Member(s)" means any Class Member(s) who submit to the
11 Settlement Administrator a valid and timely written request to be excluded from the Class pursuant
12 to Section 3.04(b) below.

13 x. "Notice Packet" means the Notice of Proposed Class Action Settlement in a form
14 substantially similar to the Notice Packet attached hereto as **Exhibit A**, subject to Court approval.

15 y. "PAGA" means the California Private Attorneys General Act of 2004, which is
16 codified in California Labor Code §§ 2698 *et seq.*

17 z. "PAGA Settlement Amount" means the portion of the Gross Settlement Amount
18 allocated to the resolution of PAGA Group Members' claims arising under PAGA. The Parties have
19 agreed that the PAGA Settlement Amount is Twenty Thousand Dollars (\$20,000), subject to Court
20 approval. Of the PAGA Settlement Amount, 75% will be considered the LWDA Payment, and the
21 remaining 25% will be added to the Net Settlement Amount and distributed to PAGA Group
22 Members.

23 aa. "PAGA Group Members" means all Class Members employed by Defendant 6th
24 Street Cooling, LLC at any time between April 6, 2019 through June 1, 2021 ("PAGA Period").

25 bb. "Participating Class Member(s)" is defined as a Class Member who does not timely
26 exclude himself or herself from the Settlement and will therefore receive his or her share of the Net
27 Settlement Amount automatically without the need to return a claim form. Each Participating Class
28 Member will be paid his/her Individual Settlement Payment.

1 cc. "Preliminary Approval Date" means the date the Court preliminarily approves the
2 Settlement embodied in this Agreement.

3 dd. "Qualified Settlement Fund" or "QSF" means a fund within the meaning of Treasury
4 Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Settlement
5 Administrator for the benefit of Participating Class Members.

6 ee. "Qualifying Workweeks" means the number of weeks that Class Members worked
7 for Defendants as non-exempt employees during the Class Period.

8 ff. "Released Parties" means Defendant 6th Street Cooling, LLC and Western Precooling
9 Systems and any and all officers, directors, shareholders, administrators, partners, assigns, attorneys,
10 insurers, agents, independent contractors, employees, predecessors, successors, parents, subsidiaries,
11 affiliates, related entities and/or other representatives of any kind, and related parties.

12 gg. "Response Deadline" means the deadline by which Class Members must postmark or
13 fax to the Settlement Administrator requests for exclusion or written notices of objection. The
14 Response Deadline will be forty-five (45) calendar days after the initial mailing of the Notice Packet
15 by the Settlement Administrator, unless the forty-fifth (45th) calendar day falls on a Sunday or
16 federal holiday, in which case the Response Deadline will be extended to the next day on which the
17 U.S. Postal Service is open. The Response Deadline will be extended as set forth herein if there is a
18 re-mailing.

19 hh. "Settlement Administration Costs" means all costs incurred by the Settlement
20 Administrator in administration of the Settlement, including, but not limited to, mailing of notice to
21 the class, calculation of Individual Settlement Payments, generation of Individual Settlement
22 Payment checks and related tax reporting forms, administration of unclaimed checks, and generation
23 of checks to Class Counsel for attorneys' fees and costs, to Named Plaintiff for his Incentive Award,
24 and to the LWDA. The Settlement Administration Costs shall be paid from the Gross Settlement
25 Amount. Class Counsel estimates that the fees and costs paid to the Settlement Administrator will
26 not exceed Six Thousand Dollars (\$6,000.00).

27 //

28 //

CONTINGENT NATURE OF THE AGREEMENT

7 Because the Parties have stipulated to the certification of the Class with respect to all causes
8 of action alleged in the Action for settlement purposes only, this Agreement requires preliminary and
9 final approval by the Court. Accordingly, the Parties enter into this Agreement on a conditional basis.
10 This Agreement is contingent upon the approval and certification by the Court. If the Date of Finality
11 does not occur, the fact that the Parties were willing to stipulate for the purposes of this Agreement
12 to a Class shall have no bearing on, nor be admissible in connection with, the issue of certification
13 of the Class with respect to all causes of action alleged in the Action. Defendants do not consent to
14 certification of the Class for any purpose other than to effectuate settlement of the Action. If the Date
15 of Finality does not occur, or if Disposition of this Action is not effectuated, any certification of the
16 Class as to Defendants will be vacated and Named Plaintiff, Defendants, and the Class will be
17 returned to their positions with respect to the Action as if the Agreement had not been entered into.
18 In the event that the Date of Finality does not occur: (a) any Court orders preliminarily or finally
19 approving certification of any class contemplated by this Agreement shall be null, void, and vacated,
20 and shall not be used or cited thereafter by any person or entity; and (b) the fact of the settlement
21 reflected in this Agreement, the fact that Defendants did not oppose the certification of a Class under
22 this Agreement, or that the Court preliminarily approved the certification of the Class, shall not be
23 used or cited thereafter by any person or entity, including in any manner whatsoever, including
24 without limitation any contested proceeding relating to the certification of any class. If the Date of
25 Finality does not occur, this Agreement shall be deemed null and void, shall be of no force or effect
26 whatsoever, and shall not be referred to or used for any purpose whatsoever. Defendants expressly
27 reserve the right to challenge the propriety of class certification in the Action for any purpose, if the
28 Date of Finality does not occur.

1 The Parties and their respective counsel shall take all steps that may be requested by the Court
2 relating to the approval and implementation of this Agreement and shall otherwise use their
3 respective best efforts to obtain Court approval and implement this Agreement. If the Court does not
4 grant the Motion for Preliminary Approval and/or the Motion for Final Approval, the Parties agree
5 to meet and confer to address the Court's concerns. If the Parties are unable to agree upon a
6 resolution, the Parties agree to seek the assistance of mediator Gig Kyriacou to resolve the dispute
7 should that be necessary.

8 **ARTICLE III**

9 **PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF THE SETTLEMENT**

10 The procedure for obtaining Court approval of and implementing this Agreement shall be as
11 follows:

12 **Section 3.01: Motion for Conditional Class Certification and Preliminary Approval**

13 Named Plaintiff will promptly bring a motion before the Court for an order conditionally
14 certifying the Class to include all claims pled in the Action based on the preliminary approval of this
15 Agreement. The date that the Court grants preliminary approval of this Agreement will be the
16 "Preliminary Approval Date."

17 Class Counsel will prepare the Motion for Preliminary Approval, and agrees to provide
18 Defendants' Counsel a courtesy copy of the motion and supporting papers prior to filing the Motion
19 for Preliminary Approval. Class Counsel will also prepare the Motion for Final Approval of the
20 Settlement and hereby agrees to provide Defendants' Counsel a courtesy copy of the motion and
21 supporting papers prior to filing the Motion for Final Approval. Prior to filing any Motion for
22 Preliminary Approval and any Motion for Final Approval, Class Counsel will meet and confer with
23 Defendants' Counsel on a mutually agreed upon date for hearing of the Motion for Preliminary
24 Approval and for hearing of the Motion for Final Approval.

25 **Section 3.02: The Settlement Administrator**

26 The Parties have chosen Phoenix Settlement Administrators to administer this Settlement and
27 to act as the Settlement Administrator, including but not limited to distributing and responding to
28 inquiries about the Notice Packet, determining the validity of exclusions/opt-outs, calculating the Net

1 Settlement Amount and the Individual Settlement Payments, issuing the Individual Settlement
2 Payment checks and distributing them to Participating Class Members, establishing and maintaining
3 the QSF, and issuing the payment to Class Counsel for attorneys' fees and costs, the Incentive Award
4 checks to Named Plaintiff, and calculating the employer payroll taxes and notifying the appropriate
5 taxing authorities and Defendants of the amount(s) due. The Settlement Administrator shall expressly
6 agree to all of the terms and conditions of this Agreement.

7 All costs of administering the Settlement, including but not limited to all costs and fees
8 associated with preparing, issuing and mailing any and all notices to Class Members and/or
9 Participating Class Members, all costs and fees associated with computing, processing, reviewing,
10 and mailing the Individual Settlement Payments, all costs and fees associated with preparing any tax
11 returns and any other filings required by any governmental taxing authority or agency, all costs and
12 fees associated with preparing any other checks, notices, reports, or filings to be prepared in the
13 course of administering disbursements from the Net Settlement Amount, and any other costs and fees
14 incurred and/or charged by the Settlement Administrator in connection with the execution of its
15 duties under this Agreement ("Settlement Administration Costs"), shall be paid to the Settlement
16 Administrator from the Gross Settlement Amount.

17 **Section 3.03: Notice to Class Members**

18 No later than ten (10) business days after the Preliminary Approval Date, Defendants will
19 provide the Settlement Administrator with a "Class List" in electronic format based on its business
20 records, identifying the names of the Class Members, their last known home addresses, Social
21 Security numbers or, as applicable, other taxpayer identification number, their dates of employment
22 and weeks worked during the Class Period. The Settlement Administrator shall not be permitted to
23 share any information included in the Class List with Plaintiffs or Class Counsel, except for the total
24 number of individuals and Qualifying Workweeks included on the Class List, absent express
25 approval by Defendants' Counsel.

26 Within ten (10) business days of receiving a Class List from Defendants, the Settlement
27 Administrator will send Class Members, by first-class mail, at their last known address, the Court
28 approved Notice Packet, in English and Spanish, including notice of this Settlement and of the

1 opportunity to opt out of the Settlement Class. The Notice Packet will include a calculation of the
2 Class Member's approximate share of the Net Settlement Amount. Class Members will have forty-
3 five (45) days from the date of mailing in which to postmark objections or requests for exclusion.
4 The Settlement Administrator will report to the Parties, in summary or narrative form, the substance
5 of its findings with respect to the number of timely disputes, requests for exclusion, and objections
6 that the Settlement Administrator received, within ten (10) business days of the Response Deadline.
7 Prior to the initial mailing, the Settlement Administrator will check all Class Member addresses
8 against the National Change of Address database and shall update any addresses before mailing. The
9 Settlement Administrator will skip trace and re-mail all returned, undelivered mail within five (5)
10 days of receiving notice that a Notice Packet was undeliverable. If a Class Member's notice is re-
11 mailed, the Class Member shall have fifteen (15) calendar days from the re-mailing, or forty-five
12 (45) calendar days from the date of the initial mailing, whichever is later, in which to postmark
13 objections or requests for exclusion. Class Members shall not be required to submit claim forms in
14 order to receive a proportional share of the Net Settlement Amount.

15 If the Notice Packet is returned with a forwarding address, the Settlement Administrator shall
16 re-mail the Notice Packet to the forwarding address. With respect to those Class Members whose
17 Notice Packet is returned to the Settlement Administrator as undeliverable, the Settlement
18 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
19 mass search on LexisNexis or comparable databases based on set criteria and, if another address is
20 identified, shall mail the Notice Packet to the newly identified address. It is the intent of the parties
21 that reasonable means be used to locate Class Members and that the Settlement Administrator be
22 given discretion to take steps in order to facilitate notice of the Settlement and delivery of the
23 Individual Settlement Payments to all Participating Class Members.

24 If the Notice Packet is re-mailed, the Settlement Administrator will note for its own records
25 and notify Class Counsel and Defense Counsel of the date of each such re-mailing as part of a weekly
26 status report provided to the Parties.

27 In the event a Class Member's Notice Packet remains undeliverable sixty (60) calendar days
28 after the Notice Packet was initially mailed, the Settlement Administrator will not mail the Class

1 Member's Individual Settlement Payment. The Settlement Administrator will hold the Class
2 Member's Individual Settlement Payment during the check cashing period on behalf of the Class
3 Member. If at the conclusion of the check cashing period the Class Member's Notice Packet and
4 Individual Settlement Payment remain undeliverable and/or unclaimed and uncashed, the Settlement
5 Administrator will distribute the funds from unclaimed/uncashed checks in accordance with the
6 procedures set forth in Section 3.07(g) below.

7 No later than twenty (20) business days prior to the Final Fairness and Approval Hearing, the
8 Settlement Administrator shall provide Defense Counsel and Class Counsel with a declaration
9 attesting to completion of the notice process, including any attempts to obtain valid mailing addresses
10 for and re-sending of any returned Notice Packets, as well as the number of valid requests for
11 exclusion and objections that the Settlement Administrator received.

12 **Section 3.04: Responses to Notice**

13 **a. Class Member Disputes**

14 If any Class Member disagrees with Defendants' records as to his or her Qualifying
15 Workweeks during the Class Period as reflected in the Notice Packet, the Class Member shall set
16 forth in writing the Qualifying Workweeks he/she claims to have worked during the Class Period
17 and submit such writing to the Settlement Administrator by the Response Deadline, along with any
18 supporting documentation. The Notice will also provide a method for the Class Member to challenge
19 the employment data on which his or her Individual Settlement Payment is based. The Settlement
20 Administrator shall contact the Parties regarding the dispute and the Parties will work in good faith
21 to resolve it. If the Parties are unable to resolve the dispute, the Settlement Administrator will be the
22 final arbiter of the Qualifying Workweeks for each Class Member during the Class Period based on
23 the information provided to it.

24 **b. Requests for Exclusion from Class**

25 In order for any Class Member to validly exclude himself or herself from the Class and this
26 Settlement (*i.e.*, to validly opt out), a written request for exclusion must be signed by the Class
27 Member or his or her authorized representative, and must be sent to the Settlement Administrator,
28 postmarked no later than the Response Deadline (or fifteen (15) days after the Settlement

1 Administrator re-mails the Notice to the Class Member, whichever is later). The Notice Packet shall
2 contain instructions on how to validly exclude himself or herself from the Class and this Settlement
3 (*i.e.*, opt out), including the language to be used in a request for exclusion. The date of the initial
4 mailing of the Notice Packet, and the date the signed request for exclusion was postmarked, shall be
5 conclusively determined according to the records of the Settlement Administrator. Any Class
6 Member who timely and validly requests exclusion from the Class and this Settlement will not be
7 entitled to any Individual Settlement Payment, will not be bound by the terms and conditions of this
8 Agreement, and will not have any right to object, appeal, or comment thereon.

9 Any Class Member who fails to timely submit a request for exclusion shall automatically be
10 deemed a Class Member whose rights and claims with respect to the issues raised in the Action are
11 determined by the Court's Final Order Approving Settlement of Class Action, and by the other
12 rulings in the Action. Thus, said Class Member's rights to pursue any claims covered by the Action
13 and/or released in this Agreement will be extinguished.

14 **c. Objections to Settlement**

15 For any Class Member to object to this Agreement, or any term of it, the person making the
16 objection must not submit a request for exclusion (*i.e.*, must not opt out), and should send to the
17 Settlement Administrator, postmarked or faxed no later than the Response Deadline (or fifteen (15)
18 days after the Settlement Administrator re-mails the Notice to the Class Member, whichever is later),
19 a written statement of the grounds of objection, signed by the objecting Class Member or his or her
20 attorney, along with all supporting papers. The date of the initial mailing of the Notice Packet, and
21 the date the signed objection was postmarked, shall be conclusively determined according to the
22 records of the Settlement Administrator. The Settlement Administrator shall send any objections it
23 receives to Defense Counsel and Class Counsel within three (3) business days of receipt. Class
24 Members may also appear at the final approval hearing to object. The Court retains final authority
25 with respect to the consideration and admissibility of any Class Member objections.

26 **d. Encouragement of Class Members**

27 The Parties to this Agreement and the counsel representing such Parties shall not, directly or
28 indirectly, through any person, encourage or solicit any Class Member to exclude him or herself from

1 this Settlement (opt out), or to object to it. However, Class Counsel may respond to inquiries from
2 Class Members.

3 **e. Right of Plaintiff to Adjust Gross Settlement Amount**

4 Defendants have represented that there were approximately 124 Class Members and
5 approximately 5,935 workweeks. If the number of workweeks for the Class Period increases by more
6 than 15% (which is more than 6,825 workweeks) as of the end of the Class Period, there will be a
7 pro rata adjustment to the Gross Settlement Amount of \$100 per additional workweek above the 15%
8 threshold.

9 **f. Right of Defendants to Revocation and/or Termination of Settlement**

10 Defendants shall have the right, at their sole discretion, to terminate the settlement if 15%
11 percent or more of class members timely elect to opt out of the settlement agreement. If Defendants
12 exercise their right under this paragraph, they shall be solely liable for administrative costs incurred
13 up to that date.

14 **Section 3.05: Final Fairness and Approval Hearing**

15 On the date set forth in the Order for Preliminary Approval and Notice Packet, a Final
16 Fairness and Approval Hearing shall be held before the Court in order to (1) review this Agreement
17 and determine whether the Court should give it final approval, and (2) consider any objections made
18 and all responses by the Parties to such objections. At the Final Fairness and Approval Hearing, the
19 Parties shall ask the Court to grant final approval to this Agreement and shall submit to the Court a
20 Proposed Final Order Approving Settlement of Class Action.

21 **Section 3.06: Settlement Payment Procedures**

22 **a. Settlement Amount**

23 In exchange for the Released Claims set forth in this Agreement, Defendants agree to pay the
24 Gross Settlement Amount in the amount of Five Hundred Ninety Three Thousand Five Hundred
25 Dollars (\$593,500.00), subject to a pro rata increase under the condition set forth in Section 3.04(e).
26 The Gross Settlement Amount includes all Individual Settlement Amounts to Participating Class
27 Members, all administration costs, Class Counsel's attorney's fees and costs, PAGA Settlement
28 Amount, and the Incentive Award.

1 Within fifteen (15) calendar days after the Date of Finality, Defendants shall transfer the
2 Gross Settlement Amount plus Defendants' share of employer-side payroll taxes, into a QSF
3 established by the Settlement Administrator either directly or by sending the funds to the Settlement
4 Administer to be deposited and distributed. The Settlement Administrator will use these funds to
5 fund payment of the Individual Settlement Payments to Participating Class Members, Class
6 Counsel's attorneys' fees and costs, the Incentive Award, the LWDA Payment, and the Settlement
7 Administration Costs.

8 Within ten (10) business days after receiving Defendants' final payment, funding the Gross
9 Settlement Amount in full, the Settlement Administrator will pay the Individual Settlement Payments
10 to Participating Class Members, Class Counsel's attorneys' fees and costs, LWDA Payment, the
11 Incentive Awards, and employer and employee tax withholdings applicable to the Net Settlement
12 Amount allocated to wages. Prior to this distribution, the Settlement Administrator will perform a
13 search based on the National Change of Address Database to update and correct for any known or
14 identifiable address changes.

15 **b. Payment of Attorneys' Fees and Costs**

16 Class Counsel shall submit an application for an award of attorneys' fees of up to one-third
17 of the Gross Settlement Amount, which, based on the current Gross Settlement Amount, is One
18 Hundred Ninety Seven Thousand Eight Hundred and Thirty-Three Dollars and Thirty-Three Cents
19 (\$197,833.33). Class Counsel shall submit an application for an award of costs not to exceed Fifteen
20 Thousand Dollars (\$15,000.00). Such application for attorneys' fees and costs shall be heard by the
21 Court at the Final Fairness and Approval Hearing. Defendants shall not object to or oppose any such
22 application in these amounts. Class Counsel shall serve Defendants with copies of all documents
23 submitted in support of their application for an award of attorneys' fees and costs.

24 Any attorneys' fees and costs awarded to Class Counsel by the Court shall be paid from the
25 Gross Settlement Amount and shall not constitute payment to any Class Member(s). The attorneys'
26 fees and costs for Class Counsel approved by the Court shall encompass all work performed, costs,
27 and expenses related to the investigation, prosecution, and settlement of the Action incurred through
28 the Date of Finality. To the extent that the Court approves less than the amount of attorney's fees

1 and/or costs that Class Counsel requests, the difference between the requested and awarded amounts
2 will be reallocated to the Net Settlement Amount.

3 **c. Payment of Settlement Administration Costs**

4 The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and
5 shall not constitute payment to any Participating Class Member(s). The amount shall not exceed Six
6 Thousand Dollars (\$6,000.00).

7 **d. Payment of Incentive Award to Named Plaintiff**

8 Subject to Court approval, the Named Plaintiff shall receive an Incentive Award of up to Ten
9 Thousand Dollars (\$10,000.00), the request for which Defendants will not object to or oppose. The
10 Incentive Awards shall be paid out of the Gross Settlement Amount and shall not constitute payment
11 to any Participating Class Member(s) other than Named Plaintiff. To the extent that the Court
12 approves less than the amount of incentive award that Class Counsel request, the difference between
13 the requested and awarded amounts will be reallocated to the Net Settlement Amount.

14 Because it is the intent of the Parties that the Incentive Award represent payment to Named
15 Plaintiff for his service to the Class Members, and not wages, the Settlement Administrator will not
16 withhold any taxes from the Incentive Award. The Incentive Award will be reported on a Form 1099,
17 which the Settlement Administrator will provide to Named Plaintiff and to the pertinent taxing
18 authorities as required by law.

19 **e. Payment to the Labor and Workforce Development Agency**

20 In consideration of claims made under PAGA, Class Counsel will request that the Court
21 approve allocation of Twenty Thousand Dollars (\$20,000) of the Gross Settlement Amount to these
22 claims. Seventy-five percent (75%) of this payment will be paid to the California Labor and
23 Workforce Development Agency ("LWDA Payment"), and twenty-five percent (25%) will be paid
24 to the Net Settlement Amount for distribution to PAGA Group Members. Defendants will not oppose
25 this request. The entire PAGA Settlement Amount will be paid out of the Gross Settlement Amount.
26 The Court's adjustment, if any, of the amount allocated to Named Plaintiff's PAGA claim in the
27 Action, will not invalidate this Agreement.

28 //

f. Payment of Individual Settlement Payments to Participating Class Members

The Parties agree that the Net Settlement Amount shall be used to fund Individual Settlement Payments. The Parties agree that the Net Settlement Amount shall be divided between all Participating Class Members in proportion to the number of individual Qualifying Workweeks for each Class Member. To calculate the minimum amount each Class Member will receive based on their individual Qualifying Workweeks, the Net Settlement Amount will be divided by the total number of Qualifying Workweeks by all Class Members during the Class Period and then allocated on a pro rata basis. Qualifying Workweeks will be rounded up to the next whole integer. Each Class Member's approximate Individual Settlement Payment amount will be included in his or her Notice Packet. After final approval by the Court, the Net Settlement Amount will be dispersed to Participating Class Members (those who did not exclude themselves) on a pro rata basis based on the individual Qualifying Workweeks worked during the Class Period by each Participating Class Member.

Each Individual Settlement Payment will represent wages and penalties allocated using the following formula: 20% allocated to wages; 80% allocated to interest and penalties. 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 employer-side taxes will be paid separate from and in addition to the Gross Settlement Amount. 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.

No later than ten (10) business days after receiving the Gross Settlement Amount from Defendants, the Settlement Administrator shall prepare and mail the checks for the Individual Settlement Payments to Participating Class Members. Individual Settlement Payments paid from the Net Settlement Amount allocated to wages will be reduced by applicable employer and employee tax withholdings, and the Settlement Administrator will issue a Form W-2 for the wage portion of the Individual Settlement Payments. The Settlement Administrator will issue a Form 1099 to the extent required by law for the interest and penalty portions of the Individual Settlement Payments.

1 Participating Class Members shall have 180 days from the date their Individual Settlement Payment
2 checks are dated to cash their Settlement checks. Any checks that are not cashed upon the expiration
3 of that 180-day time period will be void, and the uncashed funds shall be paid to the State Controller
4 Unclaimed Property Fund in the name of the Class Member for whom the funds are designated.

5 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
6 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
7 a mass search on LexisNexis or a comparable database based on set criteria and, if another address
8 is identified, the Settlement Administrator shall mail the check to the newly identified address. If the
9 Settlement Administrator is unable to obtain a valid mailing address through this process, the
10 Settlement Administrator will tender the funds from the undeliverable checks to the State Controller
11 Unclaimed Property Fund in the name of the Class Member for whom the funds are designated.

12 **g. No Credit Toward Benefit Plans.**

13 The Individual Settlement Payments made to Participating Class Members under this
14 Agreement, as well as any other payments made pursuant to this Agreement, will not be utilized to
15 calculate any additional benefits under any benefit plans to which any Class Members may be
16 eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase
17 plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'
18 intention that this Agreement will not affect any rights, contributions, or amounts to which any Class
19 Members may be entitled under any benefit plans.

20 **ARTICLE IV**

21 **LIMITATIONS ON USE OF THIS SETTLEMENT**

22 **Section 4.01: No Admission**

23 Defendants dispute the allegations in the Action and disputes that, but for this Settlement, a
24 Class should not have been certified in the Action. This Agreement is entered into solely for the
25 purpose of settling highly disputed claims. Nothing in this Agreement is intended nor will be
26 construed as an admission of liability or wrongdoing by Defendants.

27 //

28 //

1 **Section 4.02: Non-Evidentiary Use**

2 Whether or not the Date of Finality occurs, neither this Agreement, nor any of its terms, nor
3 the Settlement itself, will be: (a) construed as, offered, or admitted in evidence as, received as, or
4 deemed to be evidence for any purpose adverse to Defendants or any other of the Released Parties,
5 including but not limited to, evidence of a presumption, concession, indication, or admission by any
6 of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or
7 (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further
8 proceeding in the Action, except for the purposes of effectuating the Settlement pursuant to this
9 Agreement or for Defendants to establish that a Class Member has resolved any of his or her claims
10 released through this Agreement.

11 **Section 4.03: Nullification**

12 The Parties have agreed to the certification of the Class encompassing all claims alleged in
13 the Action for the sole purpose of effectuating this Agreement. If (a) the Court should for any reason
14 fail to certify this Class for settlement, or (b) the Court should for any reason fail to approve this
15 Settlement, or (c) the Court should for any reason fail to enter the Final Order, or (d) the Final Order
16 is reversed, or declared or rendered void, or (e) the Court should for any reason fail to dispose of the
17 Action in its entirety, then (i) this Agreement shall be considered null and void; (ii) neither this
18 Agreement nor any of the related negotiations or proceedings shall be of any force or effect; (iii) all
19 Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had
20 been neither entered into nor filed with the Court; and (iv) the fact that the Parties were willing to
21 stipulate to class certification of all causes of action pled in the Action as part of the Settlement will
22 have no bearing on, and will not be admissible in connection with, the issue of whether the Class
23 should be certified by the Court in a non-settlement context in this Action or any other action, and in
24 any of those events, Defendants expressly reserve the right to oppose certification of the Class.

25 In the event of a timely appeal from the Final Order, the Final Order shall be stayed and the
26 Gross Settlement Amount shall not be distributed pending the completion of the appeal.

27 //

28 //

1 **ARTICLE V**

2 **RELEASES**

3 **Section 5.01: Released Claims by Class Members**

4 Upon the date Defendants fund the Gross Settlement Amount, Named Plaintiff and
5 Participating Class Members who do not opt out of the Settlement, release the Released Parties from
6 all claims that have been asserted or could have been asserted based on the allegations in the notices
7 provided to the California Labor and Workforce Development Agency dated July 23, 2020 and
8 March 9, 2021, and Operative Complaint filed by Plaintiff in the Imperial County Superior Court in
9 Case No. ECU001493, arising during the period April 6, 2016 to June 1, 2021, which shall include
10 claims for failure to provide compliant meal periods and associated premiums, failure to provide
11 compliant rest periods and associated premiums, failure to provide accurate itemized wage
12 statements, failure to pay all wages due upon separation of employment, failure to reimburse
13 necessary business expenses, failure to pay the correct overtime rate, violation of California Labor
14 Code section 2698, et seq. ("PAGA") based on the aforementioned, and violation of California
15 Business and Professions Code section 17200, et seq. based on the aforementioned ("Released
16 Claims").

17 **Section 5.02: Released Claims by PAGA Group Members**

18 Upon the Date of Finality, the State of California and PAGA Group Members release the
19 Released Parties from all claims exhausted in Plaintiff's notice(s) sent to the LWDA and alleged in
20 the Operative Complaint, which arose during the PAGA Period, regardless of whether PAGA Group
21 Members opt out of the Class Settlement.

22 **Section 5.03: Named Plaintiff's Release of Unknown Claims**

23 In addition to the releases made by all Class Members, upon the Date of Finality, Named
24 Plaintiff, expressly waives, releases, acquits, and forever discharges the Released Parties from any
25 and all claims, actions, charges, complaints, grievances, and causes of action, of any nature arising
26 from Named Plaintiff's employment with and/or separation of employment from Defendants, and
27 any acts that have or could have been asserted in any legal action or proceeding against Defendants,
28 whether known or unknown, arising under any federal, state, or local law, or statute, including, inter

1 alia, those arising under the California Labor Code, Fair Labor Standards Act, Americans with
2 Disabilities Act, Title VII of the Civil Rights Act of 1964, Employee Retirement Income Security
3 Act, National Labor Relations Act, California Corporations Code, California Business and
4 Professions Code, California Fair Employment and Housing Act, California Constitution (all as
5 amended), and law of contract and tort, as well as for discrimination, harassment, retaliation,
6 wrongful termination, lost wages, benefits, other employment compensation, emotional distress,
7 medical expenses, other economic and non-economic damages, attorney fees, and costs, which exist
8 or may exist as of the Parties' execution of this Agreement.

9 Section 1542 of the California Civil Code provides as follows:

10 *"A general release does not extend to claims which the creditor does not*
11 *know or suspect to exist in his or her favor at the time of executing the*
12 *release, which if known by him or her must have materially affected his*
13 *or her settlement with the debtor."*

14 Plaintiff's general release provided herein is made with an express waiver and relinquishment
15 of any claim, right, or benefit under California Civil Code § 1542.

16 **ARTICLE VI**

17 **MISCELLANEOUS PROVISIONS**

18 **Section 6.01: Amendments or Modification**

19 The terms and provisions of this Agreement may be amended or modified only by an express
20 written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel.

21 **Section 6.02: Assignment**

22 None of the rights, commitments, or obligations recognized under this Agreement may be
23 assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express written
24 consent of each other Party and their respective counsel. The representations, warranties, covenants,
25 and agreements contained in this Agreement are for the sole benefit of the Parties under this
26 Agreement and shall not be construed to confer any right or to avail any remedy to any other person.

27 //

28 //

1 **Section 6.03: Governing Law**

2 This Agreement shall be governed, construed, and interpreted, and the rights of the Parties
3 shall be determined, in accordance with the laws of the State of California, without regard to conflicts
4 of laws.

5 **Section 6.04: Entire Agreement**

6 This Agreement, including the Exhibits referred to herein, which form an integral part hereof,
7 contains the entire understanding of the Parties with respect to the subject matter contained herein.
8 In case of any conflict between text contained in Articles I through VI of this Agreement and text
9 contained in the Exhibits to this Agreement, the former (*i.e.*, Articles I through VI) shall be
10 controlling, unless the Exhibits are changed by or in response to a Court order. There are no
11 restrictions, promises, representations, warranties, covenants, or undertakings governing the subject
12 matter of this Agreement other than those expressly set forth or referred to herein. This Agreement
13 supersedes all prior agreements and understandings among the Parties with respect to the settlement
14 of the Action, including correspondence between Class Counsel and Defense Counsel and drafts of
15 prior agreements or proposals.

16 **Section 6.05: Waiver of Compliance**

17 Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any
18 obligation, covenant, agreement, or condition set forth in this Agreement may be expressly waived
19 in writing, to the extent permitted under applicable law, by the Party or Parties and their respective
20 counsel entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or
21 failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or
22 condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

23 **Section 6.06: Counterparts and Fax/PDF Signatures**

24 This Agreement, and any amendments hereto, may be executed in any number of counterparts
25 and any Party and/or their respective counsel may execute any such counterpart, each of which when
26 executed and delivered shall be deemed to be an original. All counterparts taken together shall
27 constitute one instrument. A fax or PDF signature on this Agreement shall be as valid as an original
28 signature.

1 **Section 6.07: Meet and Confer Regarding Disputes**

2 Should any dispute arise among the Parties or their respective counsel regarding the
3 implementation or interpretation of this Agreement, a representative of Class Counsel and a
4 representative of Defense Counsel shall meet and confer in an attempt to resolve such disputes prior
5 to submitting such disputes to the Court.

6 **Section 6.08: Agreement Binding on Successors**

7 This Agreement will be binding upon, and inure to the benefit of, the successors in interest
8 of each of the Parties.

9 **Section 6.09: Cooperation in Drafting**

10 The Parties have cooperated in the negotiation and preparation of this Agreement. This
11 Agreement will not be construed against any Party on the basis that the Party, or the Party's counsel,
12 was the drafter or participated in the drafting of this Agreement.

13 **Section 6.10: Fair and Reasonable Settlement**

14 The Parties believe that this Agreement reflects a fair, reasonable, and adequate settlement of
15 the Action and have arrived at this Agreement through arm's-length negotiation and in the context
16 of adversarial litigation, taking into account all relevant factors, current and potential. The Parties
17 further believe that the Settlement is and is consistent with public policy, and fully complies with
18 applicable law.

19 **Section 6.11: Headings**

20 The descriptive heading of any section or paragraph of this Agreement is inserted for
21 convenience of reference only and does not constitute a part of this Agreement and shall not be
22 considered in interpreting this Agreement.

23 **Section 6.12: Notice**

24 Except as otherwise expressly provided in the Agreement, all notices, demands, and other
25 communications under this Agreement must be in writing and addressed as follows:

26 *To Named Plaintiff and the Class:*

27 Kashif Haque
28 Samuel A. Wong

Jessica L. Campbell
Chelsea D. Hollins
AEGIS LAW FIRM, PC
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: (949) 379-6250
Facsimile: (949) 379-6251

And

To Defendants:

LightGabler
Jonathan Fraser Light
Michael H. Brody
760 Paseo Camarillo, Suite 300
Camarillo, CA 93010
(805) 248-7208
(805) 248-7209 (fax)
jlight@lightgablerlaw.com
mbrody@lightgablerlaw.com

Section 6.13: Enforcement of Settlement and Continuing Court Jurisdiction

To the extent consistent with class action procedure, this Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court 3.769(h). The Final Order entered by the Court will not adjudicate the merits of the Action or the liability of the Parties resulting from the allegations of the Action. Its sole purpose is to adopt the terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the Court shall retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest extent to enforce and effectuate the terms and intent of this Agreement. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

Section 6.14: Mutual Full Cooperation

The Parties agree fully to cooperate with each other to accomplish the terms of this Agreement, including but not limited to the execution of such documents, and the taking of such other action, as may reasonably be necessary to implement the terms of this Agreement. The Parties

1 to this Agreement shall use their best efforts, to effectuate and implement this Agreement and its
2 terms. In the event the Parties are unable to reach agreement on the form or content of any document
3 needed to implement the Settlement, or on any supplemental provisions that may become necessary
4 to effectuate the terms of the Settlement, the Parties agree to seek the assistance of the Court.

5 **Section 6.15: Authorization to Act**

6 Class Counsel warrants and represents that they are authorized by Named Plaintiff, and
7 Defense Counsel warrants that they are authorized by Defendants, to take all appropriate action
8 required to effectuate the terms of this Agreement, except for signing documents, including but not
9 limited to this Agreement, that are required to be signed by the Parties themselves. Defendants
10 represents and warrants that the individual executing this Agreement on its behalf has the full right,
11 power, and authority to enter into this Agreement and to carry out the transactions contemplated
12 herein.

13 **Section 6.16: No Reliance on Representations**

14 The Parties have made such investigation of the facts and the law pertaining to the matters
15 described herein and to this Agreement as they deem necessary, and have not relied, and do not rely,
16 on any statement, promise, or representation of fact or law, made by any of the other parties, or any
17 of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted
18 rights, or with regard to the advisability of entering into and executing this Agreement, or with respect
19 to any other matters. No representations, warranties, or inducements, except as expressly set forth
20 herein, have been made to any party concerning this Agreement.

21 **EXECUTION BY PARTIES AND COUNSEL**

22 The Parties and their counsel hereby execute this Agreement.

23
24
25 Dated: 6/18/2021

DAVID CHAVEZ

26
27 By: David Chavez
28 Named Plaintiff

DocuSigned by:

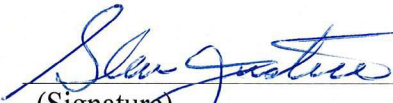
David Chavez

0C5CDA73D8F5440...

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

Dated: June 7, 2021

6TH STREET COOLING, LLC

By: 
(Signature)
Glen Justice
(Printed Name)
GENERAL MANAGER
(Title)

Dated: _____

WESTERN PRECOOLING SYSTEMS

By: 
(Signature)
CRAG MILLER
(Printed Name)
PRESIDENT
(Title)

APPROVED AS TO FORM ONLY:

Dated: 6/18/2021

AEGIS LAW FIRM, PC

By: 
Samuel A. Wong
Jessica L. Campbell
Chelsea D. Hollins

Attorneys for Named Plaintiff David Chavez

1 Dated: June 11, 2021
2 _____
3

LIGHTGABLER



By: _____
Jonathan Fraser Light
Michael H. Brody

Attorneys for Defendants 6th Street Cooling,
LLC and Western Precooling Systems