

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

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

Melinda James individually and on behalf
of all similarly situated,

Plaintiff,

vs.

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

Defendants.

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

Hon. Peter Wilson - Dept. CX-102

**PLAINTIFF'S SUPPLEMENTAL BRIEFING
ADDRESSING THE COURT'S AUGUST 12,
2021 ORDER**

[Declaration of Jonathan M. Lebe Filed
Concurrently Herewith]

Hearing Information:

Date: October 7, 2021

Time: 2:00 p.m.

Location: Dept. CX-102

1 Plaintiff Melinda James (“Plaintiff”) respectfully submits this supplemental briefing
2 regarding the issues identified by the Court’s August 12, 2021 ruling. Redlined and clean versions
3 of the revised Settlement Agreement, Class Notice and Proposed Order are being filed
4 concurrently herewith.

5 **The Settlement:**

6 1) **Motion served on LWDA:** Was the Motion served on the LWDA?

7 Plaintiff’s Response: Yes. On August 20, 2021, Plaintiff’s counsel submitted the Motion
8 to the LWDA. (Exhibit H, PAGA Submission of Motion.)

9 2) **Settlement include Coolsys, Inc.:** Should the Settlement include Coolsys, Inc.
10 since it is a named defendant in the Complaint and operative First Amended Complaint? ROA 2,
11 Complaint, at ¶ 9 and ROA 50, First Amended Complaint, at ¶12.

12 Plaintiff’s Response: Coolsys, Inc. has been added to the Settlement. (Settlement, Section
13 I(P) [“Defendants: Coolsys Commercial & Industrial Solutions, Inc., formerly known as Source
14 Refrigeration & HVAC, Inc. and Coolsys, Inc.”].) Defendants have represented that Coolsys, Inc.
15 does not employ any employees but it will be a releasee.

16 3) **Average Individual PAGA settlement payment:** The average individual PAGA
17 settlement payment was not provided.

18 Plaintiff’s Response: Defendant has agreed to pay an amount of \$527,500 to settle the
19 class and PAGA claims, of which \$25,000 is reserved to settle the PAGA claims. A payment of
20 \$18,750 (75% of the PAGA settlement) will be sent to the LWDA, and the remaining \$6,250 (25%
21 of the PAGA settlement) will be distributed between the approximately 240 aggrieved employees
22 with each aggrieved employee recovering an average of approximately \$26.04.

23 4) **Released Parties:** The definition of “Released Parties” is too broad because it
24 includes all “respective past and present officers, directors, etc.” and “their respective successors
25 and predecessors, etc.”

26 Plaintiff’s Response: Plaintiff has amended the definition of “Released Parties” for the
27 definition to be less broad and to remove “respective past and present officers, directors, etc.” and
28 “their respective successors and predecessors, etc.” from the list of Released Parties. (Settlement,

Section I(HH) [“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”].)

5) **Valuation:** The valuation provided by Plaintiff is insufficient. By way of example only, there is no valuation provided for the PAGA claims, Plaintiff generally explains the claims were deeply discounted but does not provide any actual numbers or reasons specific to each claim for the discounts, and no calculations are provided.

Plaintiff’s Response: Plaintiff and her expert calculated Defendant’s maximum liability under the PAGA to be approximately \$8,775,769. Plaintiff reached this figure by multiplying the number of pay periods during the PAGA period in which a violation occurred by the applicable civil penalty for subsequent violations for minimum wage violations under PAGA, Labor Code section 1197.1, overtime wages violations under PAGA, Labor Code section 510, reporting time pay violations under PAGA, meal period violations under PAGA, Labor Code section 226.7, rest break violations under PAGA Labor Code section 226.7, wage statement violations under PAGA, Labor Code section 226, and final wages violations under PAGA, Labor Code section 203.

The relevant exposure related to PAGA penalties was reduced by Plaintiff’s counsel for various reasons. First, the PAGA claims could also have been deemed unmanageable by the Court. Second, the Court has discretion to reduce the PAGA award based on whether the amount of the award would be “unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(e)(2). For instance, it is within a trial court’s discretion to significantly reduce PAGA penalties even when there is a finding that a violation of the Labor Code occurred. *See Carrington v. Starbucks*, (2018) 30 Cal. App. 5th 504. In theory, the Court could reduce the award by 99%. Based on the foregoing, Plaintiff believe the \$25,000 for distribution to the LWDA and Class Members for the settlement of the PAGA civil penalty claims is appropriate.

6) **Exclusion:** The Settlement references a Request for Exclusion Form but no such form is included. See e.g., Settlement, at ¶III.K.1.a. Confirm that a Class Member requesting an exclusion has 14 calendar days to cure any defect. Settlement, at ¶III.K.2.e.

1 Plaintiff's Response: The Parties have prepared a Request for Exclusion Form. (Exhibit
2 G, Request for Exclusion Form.) Class Members requesting an exclusion have 14 calendar days
3 to cure any defect. (Settlement, Section III(L)(2)(e) ["If any Exclusion Form received is
4 incomplete or deficient, the Settlement Administrator shall send a letter informing the Class
5 Member of the deficiency and allow fourteen (14) calendar days to cure the deficiency"].)

6 7) **Response Deadline:** The Settlement extends the response deadline for objections
7 and exclusions by 10 calendar days for re-mailed or forwarded Class Notices. Settlement, at
8 ¶III.K.2.d. Does this extended deadline also apply to disputes? The Notice seems to indicate it
9 does but the Settlement does not.

10 Plaintiff's Response: The 10-calendar day extension to the response deadline for
11 objections and exclusions also applies to disputes. (Settlement, Section III(L)(2)(d) ["Those
12 Class Members who receive a re-mailed Class Notice, whether by skip-trace or forwarded mail,
13 will have their Response Deadline to submit any disputes is extended by ten (10) calendar days
14 from the original Response Deadline"].)

15 8) **Individual Settlement Dispute:** The Settlement appears to permit the Plaintiff and
16 Defendant to make the final decision on the Individual Settlement Share if there is a dispute.
17 Settlement, at ¶III.K.2.d. Was this intentional? The Settlement should also be revised so that the
18 parties submit all disputes, along with the evidence submitted and initial resolution of those
19 disputes, to the Court and that the Court shall have the right to review any initial decision made by
20 the parties or Settlement Administrator regarding the dispute.

21 Plaintiff's Response: The Parties will mutually make a recommendation/initial decision
22 about the number of eligible weeks that should be applied for the Class Members Individual
23 Settlement Share should a dispute arise. The Parties' recommendation/initial decision, however,
24 is subject to the Court's review. (Settlement, Section III(L)(2)(d) ["The Parties will submit all
25 disputes, along with the evidence submitted and initial resolution of those disputes, to the Court
26 and the Court shall have the right to review any initial decision made by the Parties or Settlement
27 Administrator regarding the dispute"].)

1 9) **Response by Plaintiff and Defendant:** Confirm that any response by Plaintiff and
2 Defendant is due no later than 7 calendar days before the Final Approval hearing.

3 Plaintiff's Response: Any response to objections by Plaintiff and Defendant is due no
4 later than 7 calendar days before the Final Approval Hearing. (Settlement, Section III(L)(3)(d)
5 ["Named Plaintiff and Defendants will be permitted to respond in writing to such objections no
6 later than seven (7) calendar days before the Final Approval hearing"].)

7 10) **Report of All Exclusions, Objections, and Disputes:** With the motion for final
8 approval, Plaintiff must present a full report to the Court on all exclusions, objections and disputes
9 received. Any written objections and responses should be included with the final report and
10 provided to the Court. The Court will consider any objections at the final approval hearing.

11 Plaintiff's Response: With the motion for final approval, Plaintiff will provide a full report
12 to the Court on all exclusions, objections, and disputes received. Moreover, any written objections
13 and responses will be included in the report and provided to the Court.

14 11) **Settlement Administrator's Report and Declaration:** The Settlement
15 Administrator is required to provide a report regarding the Class Notices no later than 7 calendar
16 days after the Response Deadline (see Settlement, at ¶III.K.4.b) and a declaration of diligence
17 within 14 calendar days after the Response Deadline, which will also be filed with the Court no
18 later than 10 calendar days before the Final Approval hearing, and supplement its declaration if
19 any material changes occur from the date of filing of its prior declaration. See Settlement, at
20 ¶III.K.2.g. Are these different reports? The Settlement should be revised to require the Settlement
21 Administrator to file a report regarding the results of the Class Notice mailing and diligence,
22 including an estimated high, low and average for individual settlement payments, along with
23 Plaintiff's individual payments, with the Motion for Final Approval.

24 Plaintiff's Response: Yes, they are different reports/declarations. The first report which
25 is required by the Settlement at Section III, (L)(4)(b) is a report about the status of the mailing of
26 the Class Notices to be provided within 7 calendar days after the response deadline. The second
27 declaration provided by the Settlement Agreement at Section III, L(2)(g) is a more detailed
28 explanation of the Settlement Administrator's efforts to mail the Class Notices. Moreover, the

1 declaration includes information on the individual settlement payments. (Settlement, Section III,
2 K(2)(g) [“No later than fourteen (14) calendar days after the Response Deadline, the Settlement
3 Administrator will serve on the Parties a declaration of due diligence setting forth its compliance
4 with its obligations under this Agreement and include an estimated high, low, and average for
5 individual settlement payments, along with Plaintiff’s individual payment”].) All of the
6 information is the first report required by the Settlement at Section III, (L)(4)(b) will be included
7 in the declaration required by the Settlement Agreement at Section III, L(2)(g) and filed with the
8 Court.

9 12) **PAGA Notices:** The PAGA Notices to the LWDA should be provided.

10 Plaintiff’s Response: The PAGA notices submitted to the LWDA are being provided to
11 the Court. (Exhibit I, PAGA Notice; Exhibit J, Amended PAGA Notice.)

12 13) **Billing Records:** At final approval Counsel should provide billing records in
13 support of its fees and documentation of its costs. Further, Plaintiff’s counsel must disclose
14 whether they have any fee-splitting arrangement with any other counsel, or confirm none exist.
15 (*Barnes, Crosby, Fitzgerald & Zeman, LLP v. Ringler* (2012) 212 Cal.App.4th 172, 184; Cal. R.
16 Ct. Rule 3.769(b).)

17 Plaintiff’s Response: With the motion for final approval, Plaintiff’s counsel will provide
18 billing records in support of its fees and documentation of its costs. Plaintiff’s counsel will also
19 confirm that no fee-splitting arrangement exists.

20 14) **Plaintiff’s Enhancement Declaration:** The Court will determine the appropriate
21 amount of Plaintiff’s enhancement at final approval. At final approval, Plaintiff should submit a
22 declaration addressing the factors set forth in *Golba v. Dick’s Sporting Goods, Inc.* (2015) 238
23 Cal.App.4th 1251, 1272 and *Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785,
24 804, including an estimate of the hours spent on this litigation.

25 Plaintiff’s Response: With the motion for final approval, Plaintiff will submit a declaration
26 addressing the factors set forth in *Golba v. Dick’s Sporting Goods, Inc.* (2015) 238 Cal.App.4th
27 1251, 1272 and *Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, 804, including
28 an estimate of the hours spent on this litigation.

The Class Notice:

15) **Revised to Address the Above Issues:** The Class Notice is to be revised consistent with the issues addressed above.

Plaintiff's Response: The Revised Class Notice is revised consistent with the issues addressed above.

16) **Clarification:** In an effort to clarify, the Notice separates two terms by "or" but that appears more confusing. For example, on page 1, (in the "You can do nothing" section) the reference to "you will receive a payment from the Settlement, or your Individual Settlement Payment" should simply read "you will receive a payment from the Settlement (your Individual Settlement Payment.)" In that same block, "you will release or give up any rights" should simply state "you will release (give up) any rights." In Section 9, the phrase "if you do not opt out or exclude yourself from the settlement" should be replaced with "if you do not opt out (exclude yourself) from the settlement."

Plaintiff's Response: In the "Your Legal Rights and Options to this Settlement," the "You Can Do Nothing" section has been clarified to read "You will receive a payment form the Settlement (your Individual Settlement Payment)" and "You will release (give up) any rights...." Also, section 9 had been clarified to read "If you do no opt out (exclude yourself) from the settlement...." (Revised Class Notice, pg. 1.)

17) **Edit to Second Paragraph in Section 8:** In Section 8, second paragraph, add the phrase "you worked" after Eligible Work weeks.

Plaintiff's Response: The edit to the second paragraph in Section 8 has been made. (Revised Class Notice, pg. 4 ["Based on Coolsys' records, the number of Eligible Workweeks you worked during the Class Period..."].)

18) **Consistency of Defined Terms:** The Class Notice appears to use different defined terms than the Settlement. For example, the Notice refers to "PAGA Representative Action Members" and not "Eligible Aggrieved Employees". To avoid confusion, and for consistency, the same defined terms should be used in the Settlement and Class Notice.

1 Plaintiff's Response: The term "PAGA Representative Action Members" has been
2 replaced with the term "Eligible Aggrieved Employees" for consistency of the same defined terms
3 used in the Settlement and Class Notice.

4 19) **Notice Translation:** The Settlement Administrator is supposed to provide the
5 Notice in English and Spanish. Settlement, at ¶I.JJ. Does notice need to be translated to other
6 languages?

7 Plaintiff's Response: The notice does not need to be translated to other languages besides
8 English and Spanish.

9 20) **Class Notice Mention Coolsys, Inc.:** Should the Class Notice mention Defendant
10 Coolsys, Inc. since it is a named defendant in the Complaint and First Amended Complaint?

11 Plaintiff's Response: Coolsys, Inc. is included in the Class Notice.

12 21) **Class Notice states PAGA settlement is 100% penalties but not Settlement:**
13 The Class Notice states the PAGA settlement payments will be classified as 100% penalties but
14 this is not in the Settlement.

15 Plaintiff's Response: The Settlement states that PAGA settlement payments will be
16 designated as penalties similarly to the Class Notice. (Settlement, Section III, I(6) "The entirety
17 of Individual Eligible Aggrieved Employee Settlement will be designated as penalties."))

18 22) **Consistency of Dispute Procedure:** The procedure for disputes in the Class
19 Notice is not consistent with the Settlement. By way of example only, the Class Notice indicates
20 the deadline for submitting a dispute is extended for remailed or forwarded Class Notices (see
21 Notice, at §9, p. 5) but this is not contained in the Settlement and the Class Notice does not mention
22 Defendant's records will be "presumed determinative" absent contrary evidence from the disputing
23 Class Member as set forth in the Settlement. See Class Notice, at Section 9, p. 5.

24 Plaintiff's Response: The Class Notice's procedure for disputes now reads consistently
25 with the Settlement and the method for submitting a dispute is provided in the notice. (Revised
26 Class Notice, Section 9, pg. 5)

27 23) **Release for Class Claims and PAGA Claims:** The Release for Class Claims and
28 the PAGA claims in the Class Notice does not track the language of the Releases in the Settlement

1 since they improperly include claims plead or which could have been pled in the Plaintiff's PAGA
2 Notices to the LWDA. See Notice, at Section 11, p. 5.

3 Plaintiff's Response: The Release for Class and PAGA claims in the Class Notice now
4 tracks the language in the Settlement. (Revised Class Notice, Section 11, pgs. 5-6.)

5 24) **Addition to Section 12:** At the end of Section 12, add the following: "the PAGA
6 released claims do not include any claims for unpaid wages."

7 Plaintiff's Response: The addition at the end of Section 12 has been made. (Revised Class
8 Notice, Section 12, pg. 6 ["The PAGA released claims do not include any claims for unpaid
9 wages."])

10 25) **Request for Exclusion:** The Class Notice does not reference or include the
11 Request for Exclusion Form referenced in the Settlement. See Notice, at §12, p. 6. Additionally,
12 the requirements for a request for exclusion in the Class Notice is different and requires less
13 information than the Settlement.

14 Plaintiff's Response: The Class Notice requirements for request for exclusion is now the
15 same as the requirements in the Settlement Agreement. (Revised Class Notice, Section 12, pg. 6.)
16 The Parties have also prepared a Request for Exclusion form which is part of the Notice that will
17 be provided to class members. (Exhibit G, Request for Exclusion Form.)

18 26) **Objection Procedure:** The Class Notice improperly implies that an objection may
19 only be made if the objecting party believes the Settlement is unfair or inadequate. See Notice, at
20 §13. The objection procedure in the Class Notice is different and less onerous than the Settlement.
21 The Class Notice does not advise objecting Class Members that Plaintiff and Defendant may file
22 a response to any written objection and that the Court will rule on the objection.

23 Plaintiff's Response: The objection procedure in the Class Notice is now the same as in
24 the Settlement Agreement. (Revised Class Notice, Section 13, pg. 7.) The Class Notice now
25 advises objecting Class Members that Plaintiff and Defendant may file a response to any written
26 objection and that the Court will rule on the objection. (Revised Class Notice, Section 13, pg. 7
27 ["Class Counsel and Counsel for Coolsys and Coolsys Inc. are permitted to respond in writing to
28 your objection before the Final Approval Hearing."])

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

32) **Proposed Date for Final Approval:** The proposed date for the hearing for Final Approval should be included.

Plaintiff's Response: A proposed date for final approval is included. (Amended [Proposed] Order 4:25.)

33) **Eligible Aggrieved Employees Cannot Opt Out:** The proposed order does not state that Eligible Aggrieved Employees cannot opt out of the PAGA settlement.

Plaintiff's Response: Paragraph 15 has been added to state Eligible Aggrieved Employees cannot opt out of the PAGA settlement even if they opt out of the class action. (Amended [Proposed] Order 6:3-5. ["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"].)

34) **Release of PAGA Claims:** There is no reference to the release of the PAGA claims.

Plaintiff's Response: Paragraph 16 has been added to reference the release of PAGA claims. (Amended [Proposed] Order 6:6-9 ["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"].)

35) **Extension of Deadline in Implementation Schedule:** The implementation schedule does not include the extension of the deadline for requests for exclusion and objections for remailed and forwarded Class Notices.

Plaintiff's Response: The implementation schedule has been revised to include the extension for exclusion and objections for remailed and forwarded Class Notices.

36) **Revision to Implementation Schedule:** The implementation schedule refers to "Opt Out Requests, Requests for Exclusions, or Objections to the Settlement". This is confusing because it appears "Opt Out Requests" and "Requests for Exclusions" are different requests.

Plaintiff's Response: The implementation schedule has been revised to make it clear the request for exclusion is the same as opting out.

Dated: September 27, 2021 **Lebe Law, APLC**

By:  _____
Jonathan M. Lebe

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