

SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIMS

This PAGA Settlement Agreement and General Release of Claims (the “Settlement” or “Agreement”) is made and entered into by and between the parties to this Agreement, Plaintiff Vanessa Ticas (“Plaintiff”) and Defendant Nutiva (“Defendant”) (collectively the “Parties”). This Agreement is intended to fully, finally and forever resolve, discharge and settle the Released Claims, as defined below, upon and subject to the terms and conditions of this Agreement.

I. DEFINITIONS

A. “Action” or “Lawsuit” shall mean the civil lawsuit entitled *Vanessa Ticas v. Nutiva*, Contra Costa County Superior Court, Case No. C20-02500.

B. “PAGA Counsel” or “Plaintiff’s Counsel” shall mean Nazo Koulloukian from Koul Law Firm, and Sahag Majarian, II, from the Law Offices of Sahag Majarian II.

C. “Defense Counsel” shall mean Linda M. Moroney and Natalie B. Fujikawa from Gordon Rees Scully Mansukhani, LLP.

D. “Covered Period” shall mean the period from August 28, 2019, through September 15, 2021.

E. “Defendant” shall mean Defendant Nutiva.

F. “Mediator” shall mean Jeffrey A. Ross from Jeffrey Ross Mediation.

G. “PAGA Representative” or “Plaintiff” shall mean Vanessa Ticas.

H. “PAGA Aggrieved Employees” shall mean the current and former employees working for Defendant in the Production Department at any time during the Covered Period.

I. “Court” shall mean the Contra Costa County Superior Court, including, but not limited to, the Hon. Edward G. Weil, assigned for all purposes to the Action.

J. “Covered Claims” shall mean Plaintiff’s claim for civil penalties pursuant to the California Private Attorneys General Act of 2004, Labor Code, sections 2699, *et seq.* (“PAGA”), based on the following allegations against Defendant: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide compliant meal periods; (4) failure to provide safe working conditions; (5) failure to provide compliant rest and cool-down periods; (6) failure to timely pay all wages owed; and (7) failure to provide accurate, itemized wage statements and maintain accurate records.

K. The “Effective Date” of the Settlement embodied in this Agreement shall mean the date of the Parties’ receipt of approval of the Settlement by the Court.

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L. “Settlement Administration Costs” means the fees and expenses reasonably incurred by the Settlement Administrator as a result of the procedures and processes expressly required by this Agreement, which are estimated at Three Thousand Five Hundred Dollars (\$3,500.00). Any portion of the Settlement Administration Costs not used or approved by the Court shall be added to the PAGA Settlement Amount.

M. “Settlement Administrator” means Phoenix Settlement Administrators.

II. RECITALS

A. WHEREAS, Defendant employed Plaintiff in its Production Department during the Covered Period.

B. WHEREAS, on August 28, 2020, PAGA Counsel submitted notice via online submission and by U.S. Certified Mail a Notice to the California Labor Workforce Developmental Agency (“LWDA”) of the Covered Claims.

C. WHEREAS, on December 4, 2020, Plaintiff filed this Action.

D. WHEREAS, on April 15, 2021, Defendant filed an Answer to the Action, including a general denial of Plaintiff’s claims and applicable affirmative defenses.

E. WHEREAS, the Parties desire to settle the Action so as to avoid the time and expense of protracted litigation, as well as any inconvenience or disruption to Defendant’s business. The Parties have taken into account the risk and uncertainty of the outcome inherent in any litigation.

F. WHEREAS, the Parties engaged in negotiations reaching an agreement in principle on the terms of settlement which is intended to fully and finally resolve all claims asserted in the Action.

G. WHEREAS the Parties participated in a private mediation on September 15, 2021, with Jeffrey A. Ross, a well-reputed mediator with specific expertise in California employment law, wage and hour actions, as well as PAGA actions.

H. WHEREAS, the Parties understand that the Court must approve the Settlement for it to be binding. In accordance with Labor Code section 2699(1)(2), Court approval is required as to “any penalties sought as a part of a proposed settlement” of a PAGA action on a representative basis. However, as explained in *Arias v. Superior Court*, (2009) 46 Cal.4th 969, the Parties are not obligated to follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement thorough a motion for preliminary or final approval. Instead, in order to comply with the requirements of Labor Code section 2699 the Parties shall submit a stipulation to the Court identifying the terms of the settlement and requesting that the Court approve the Settlement (“Approval Stipulation”). The

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Settlement is contingent upon the approval by the Court and shall be void if the Court does not grant the approval requested.

I. WHEREAS, Plaintiff and PAGA Counsel have diligently pursued an investigation of the Covered Claims against Defendant. Based on their own independent investigations and evaluations, Defendant and Plaintiff, and their respective counsel, are of the opinion that the settlement for the consideration and on the terms set forth in this Settlement is fair, reasonable and adequate and is in the best interests of the Plaintiff, the PAGA Aggrieved Employees, and Defendant in light of all known facts and circumstances and the risks inherent in litigation, including the potential appellate issues.

J. WHEREAS, the Parties reached this Settlement during mediation on September 15, 2021, including Defendant's agreement to pay the gross amount of \$125,000 to resolve the Action in its entirety, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, The Parties agree to settle Plaintiff's claims under the terms set forth below. The Parties desire to compromise, settle and release any and all claims arising from all penalties or damages sought by Plaintiff in the Action. However, Defendant denies, and continues to deny, all of Plaintiff's material allegations in the Action.

III. TERMS OF THE SETTLEMENT

A. Total Settlement Amount. In full consideration for the mutual covenants, promises and representations set forth in this Agreement, Defendant agrees to pay, in accordance with the terms specified below, the total sum of **One Hundred Twenty-Five Thousand Dollars and Zero Cents (\$125,000.00)** (the "Settlement Payment") as apportioned below.

1. Attorneys' Fees and Costs. A total of **Forty-One Thousand Six Hundred and Sixty Two Dollars and Fifty Cents (\$41,662.50)** shall be apportioned as reasonable attorneys' fees and reimbursement of actual litigation costs and expenses of up to Twelve Thousand Five Hundred Dollars (\$12,500), shall be payable to PAGA Counsel at Koul Law Firm and Law Offices of Sahag Majarian II, Attn: Nazo Koulloukian, 3435 Wilshire Boulevard, Suite 1710, Los Angeles, California 90010. This payment will be subject to IRS Form 1099 reporting, and PAGA Counsel will provide the Settlement Administrator with properly-completed and signed IRS W-9 Forms.

2. Settlement Administration Costs. The Settlement Administrator shall be paid for the reasonable costs of administration from the PAGA Settlement Amount. Such costs are currently estimated at **Three Thousand Five Hundred Dollars and Zero Cents (\$3,500.00)**. These costs, which shall be paid from the PAGA Settlement Amount, shall include, *inter alia*, the required tax reporting on the Individual Settlement Payments, the issuing of 1099 IRS Forms, establishing a Qualified Settlement Fund, administering and distributing the PAGA Settlement Amount and PAGA Counsel Award, and providing

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necessary reports and declarations. Any portion of the Settlement Administration Costs not allowed shall be added to the PAGA Settlement Amount and shall be distributed to PAGA Aggrieved Employees as provided in this Agreement.

3. Service Award. Plaintiff's Counsel will request, and Defendant will not oppose, a Service Award to Plaintiff from the Total Settlement Amount in an amount not to exceed **Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00)**. Should the Court approve a Service Award less than the amount stated in this Paragraph, any amount remaining will be included in the PAGA Settlement Amount to be distributed to the LWDA and the PAGA Aggrieved Employees. Plaintiff will be issued an IRS Form 1099 and its state and local equivalents for any Service Award received pursuant to this Settlement.

4. PAGA Settlement Amount. A total of **Fifty-Nine Thousand Eight Hundred Thirty-Seven Dollars and Fifty Cents (\$59,837.50)** from the Settlement Payment shall be allocated to Plaintiff's and PAGA Aggrieved Employees' claims in the Action ("PAGA Settlement Amount"). The Settlement Administrator shall pay seventy-five percent (75%), or **Forty-Four Thousand Eight Hundred Seventy-Eight Dollars and Thirteen Cents (\$44,878.13)** of the PAGA Settlement Amount to the LWDA (the "LWDA Payment"), and twenty-five percent (25%), or **Fourteen Thousand Nine Hundred Fifty-Nine Dollars and Thirty-Seven Cents (\$14,959.37)**, of the PAGA Settlement Amount to the PAGA Aggrieved Employees ("PAGA Individual Settlement Payments").

5. Payout Calculation. The amount that each PAGA Aggrieved Employee will be eligible to receive under the Settlement will be determined by the number of pay periods each PAGA Aggrieved Employee was employed by Defendant in California during the Covered Period, as reflected in Defendant's records. Based upon Defendant's records, Aggrieved Employees worked a total of **2,304** pay periods during the Covered Period. If the number of pay periods during the Covered Period exceeds **2,304**, Plaintiff will have the option to either increase the Gross Settlement Amount proportionally or rescind the Settlement Agreement. **100% of the PAGA Individual Settlement Shares are considered penalties and will not be subject to local, state or federal tax withholdings.** All PAGA Aggrieved Employees who cash their settlement check may receive an IRS Form 1099 for their Individual Settlement Payment, if deemed required by the Settlement Administrator in compliance with IRS guidelines. Plaintiff and the PAGA Aggrieved Employees agree to hold harmless the Released Parties, PAGA Counsel, and Defense Counsel for any tax liability, including penalties and interest, arising out of or relating to the PAGA Aggrieved Employees' failure to pay taxes on any amounts paid pursuant to this Settlement. PAGA Aggrieved Employees are not eligible to receive any compensation under the Settlement other than PAGA Individual Settlement Payments.

6. Treatment of PAGA Individual Settlement Payments. Each PAGA Individual Settlement Payment shall be paid through an IRS Form 1099 to the PAGA Aggrieved Employee. PAGA Aggrieved Employees shall assume full responsibility and liability for the payment of taxes due on such payments. Nothing in this Settlement is intended to constitute legal advice regarding federal, state or local tax obligations. To the

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extent that this Settlement or any of its attachments is interpreted to contain or constitute advice regarding any U.S. or Federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. Defendant is not responsible for any employee tax obligations regarding the allocation of the settlement payments.

7. Administration of Taxes by the Settlement Administrator. The Settlement Administrator shall be responsible for issuing to Plaintiff, PAGA Aggrieved Employees, and PAGA Counsel, IRS Forms 1099 or other tax forms as may be required by law for all amounts paid pursuant to this Agreement.

8. Timing of Payments. Timing for payment and information sent to the Settlement Administrator shall proceed as follows:

a) Within fifteen (15) days of Court Approval, Defendant shall wire the first installment of the Settlement Payment to Settlement Administrator in the amount of Ten Thousand Four Hundred Sixteen Dollars and Sixty-Seven Cents (\$10,416.67), and shall provide the Settlement Administrator with a list and data for the PAGA Aggrieved Employees ("PAGA List").

b) Thereafter, Defendant shall wire subsequent payments of Ten Thousand Four Hundred Sixteen Dollars and Sixty-Seven Cents (\$10,416.67) on the fifth (5th) day of each month until the balance of the Settlement Payment is paid.

c) Within five (5) business days after receiving the final installment of the Settlement Payment from Defendant, the Settlement Administrator shall issue payments to (1) PAGA Aggrieved Employees; (2) the Labor and Workforce Development Agency; and (3) PAGA Counsel. The Settlement Administrator shall also issue a payment to itself for services performed in connection with the Settlement. The Settlement Administrator shall mail the PAGA Individual Settlement Payments accompanied by a notice via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the PAGA List.

9. Confirmation of Contact Information in the PAGA List. Prior to mailing, the Settlement Administrator shall perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes.

10. Re-Mailing of Returned Notices. Any PAGA notices returned to the Settlement Administrator as non-deliverable within forty-five (45) days of mailing shall be re-sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator shall indicate the date of such re-mailing on the PAGA notice. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine the correct address using a skip-trace, or other search using the name and/or address of the PAGA Aggrieved Employee involved and shall then perform a re-mailing.

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11. Declaration of Payment. Upon completion of administration of the Settlement Payment, the Settlement Administrator shall provide PAGA Counsel with a written declaration under oath to certify such completion to the Court and counsel for all Parties.

B. Procedure for Approving Settlement.

1. Motion for an Order Approving the Settlement. The Parties will cooperate in seeking approval of the Settlement, including by drafting and filing Plaintiff's Motion for Approval of Settlement. The Parties further agree to fully cooperate in the drafting and filing of any further documents reasonably necessary to be prepared or filed and shall take all steps that may be requested by the Court relating to the approval and implementation of the Settlement. PAGA Counsel shall draft the Plaintiff's Motion for Approval of Settlement and provide the draft to Defendant's Counsel for review at least three (3) business days prior to the filing date for the Plaintiff's Motion for Approval of Settlement. Plaintiff's Counsel shall submit the Settlement Agreement and motion papers to the LWDA no later than three (3) business days after the Settlement Agreement and motion papers are filed with the Court.

At the hearing on the Plaintiff's Motion for Approval of Settlement. The Parties will jointly appear (if so ordered by the Court), support the granting of the motion, and submit an order granting the motion.

2. Notice to LWDA. Upon the Court's Approval of the Settlement, Plaintiff shall transmit the Court's Order to the LWDA within ten (10) business days after entry of the Order.

C. Plaintiff's Release of Claims. In return for the consideration described in this Agreement, and except for those obligations created by or arising out of this Agreement, Plaintiff acknowledges and agrees that, in signing this Agreement, she, on her own behalf and on behalf of her descendants, dependents, heirs, executors, administrators, assigns and successors, covenants not to sue and acknowledges complete satisfaction of and releases, absolves and discharges Defendant, its successors and assigns, parents, subsidiaries, divisions and affiliated entities, past and present, its trustees, directors, officers, shareholders, partners, franchisees, agents, attorneys, insurers, and employees, past and present (collectively referred to as "Plaintiff's Releasees"), from all claims under PAGA (Cal. Lab. Code, §§ 2699, *et seq.*). This includes all related PAGA demands, liens, agreements, contracts, covenants, actions, suits, causes of action, wages, obligations, debts, expenses, attorneys' fees, damages, judgments, orders and liabilities, of whatever kind or nature, in law, equity or otherwise, whether now known or unknown, suspected or unsuspected, and whether or not concealed or hidden, which Plaintiff now owns or holds or has at any time owned or held against Plaintiff's Releasees, or any of them, including specifically but not exclusively and without limiting the generality of the foregoing any and all claims, demands, agreements, obligations and causes of action, known or unknown, suspected or unsuspected by Plaintiff, whether related to her

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PAGA claims or any other theory under law or equity. Obligations under this Agreement do not apply to this release of claims.

D. PAGA Aggrieved Employees' Release of Claims. Upon the approval by the Court of this Settlement, Plaintiff and each PAGA Aggrieved Employee, shall, for the Covered Period, fully release and forever discharge Defendant its successors and assigns, parents, subsidiaries, divisions and affiliated entities, past and present, its trustees, directors, officers, shareholders, partners, franchisees, agents, attorneys, insurers, and employees, past and present, including any individual or entity that could be jointly liable with Defendant from the Covered Claims pursuant to Labor Code § 2699 based on the facts alleged in the Action.

E. Plaintiff's Civil Code 1542 Waiver. Plaintiff expressly waives any and all rights or benefits conferred by Section 1542 of the Civil Code against Defendant. Plaintiff expressly agrees that this Agreement shall be given full force and effect according to each and all of its express terms and conditions, including those relating to unknown and unsuspected claims, demands and causes of actions, if any, as well as those relating to any other claims, demands and causes of action. Section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiff acknowledges that she may hereafter discover claims or facts in addition to or different from those which she or it now knows or believes to exist with respect to the subject matter of this Agreement and which, if known or suspected at the time of executing this Agreement, may have materially affected this settlement. Nevertheless, Plaintiff waives any right, claim or cause of action that might arise as a result of such different or additional claims or facts related to claims under the PAGA (Cal. Lab. Code, §§ 2699, *et seq.*). Plaintiff acknowledges that she understands the significance and consequence of such release and such specific waiver of Section 1542.

F. Disputes Regarding Individual Settlement Payments. In the event that PAGA Aggrieved Employees have a dispute as to the data provided by Defendant, PAGA Aggrieved Employees will have the opportunity to provide documentation and/or an explanation. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any PAGA Individual Settlement Payments under the terms of this Agreement, and that determination shall be binding.

G. Disputes Regarding Administration of Settlement. Any disputes not resolved by the Settlement Administrator concerning the administration of the Settlement will be

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resolved by the Court under the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the disputes without the necessity of involving the Court. No further award of attorneys' fees or costs shall be sought by or made to PAGA Counsel in connection with any such further proceedings.

H. Parties' Warranties. The Parties each warrant and represent that neither has assigned or transferred to any person not a party to this Agreement any right or claim released or any part or portion of a right or claim it releases. The Parties shall each defend, indemnify and hold the other harmless from and against any claim (including the payment of attorneys' fees and costs actually incurred whether or not litigation is commenced) based on or in connection with or arising out of any such assignment or transfer made, purported or claimed.

I. Fees and Costs. Each Party agrees to bear its own attorneys' fees and costs incurred in the Action, including through the negotiation and execution of this Agreement.

J. No Admission of Liability. Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, or has any liability to anyone under the claims asserted in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims and a bona fide dispute of allegedly unpaid sums. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendant. This Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with the Settlement).

K. Confidentiality/Publicity. Plaintiff and PAGA Counsel agree that they will not issue any press releases, initiate any contact with the press or media, respond to any press inquiry, post information on any social media or website, or have any communication with the press or media about the fact, amount, or terms of the PAGA Settlement. Plaintiff and PAGA Counsel agree they will not advertise or market any of the terms of the Settlement through written, recorded, or electronic communications. In addition, PAGA Counsel will not put details about the settlement on their website. Plaintiff and PAGA Counsel further agree that if they are contacted regarding this case, they will take reasonable steps to determine whether the contacting party is a member of the PAGA Aggrieved Employees. If the contacting party is not a PAGA Aggrieved Employee or the legal representative of a PAGA Aggrieved Employee, Plaintiff and PAGA Counsel will state only that the lawsuit exists and has been resolved. However, this will not prevent PAGA Counsel from undertaking required submissions and disclosures that are required to obtain approval of the PAGA Settlement, including and not limited to, submission of the PAGA Settlement to the LWDA in conformity with the PAGA statute.

L. Court to Retain Jurisdiction. This Agreement is admissible, if necessary, to enforce its terms. This Agreement may be enforced under the procedures enunciated in Code of Civil Procedure section 664.6.

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M. Enforcement. 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 PAGA Settlement, or to declare rights and/or obligations under this PAGA Settlement, the prevailing Party or Parties shall be entitled to recover from the non-prevailing Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

N. Entire Agreement. This Agreement constitutes the entirety of the Parties' PAGA Settlement terms. No other prior or contemporaneous written or oral negotiations or agreements may be deemed binding on the Parties.

O. Severability. If any provision of this Agreement is held invalid, the invalidity shall not affect other provisions or applications of the Agreement which shall be given effect without the invalid provisions and to this end the provisions of this Agreement are declared to be severable.

P. Cooperation of Parties in Drafting Agreement. The Parties cooperated in the drafting and preparation of this Agreement. No provision of this Agreement shall be construed against any party because that party was the drafter.

Q. Limited Waiver or Breach. No waiver of any breach of any term or provision of this Agreement shall be construed to be, or shall be, a waiver of any other breach of this Agreement. No waiver shall be binding unless in writing and signed by the party waiving the breach.

R. Reliance on Respective Counsel. In entering into this Agreement, the Parties relied upon the advice of their attorneys. Each party confirms that the terms of this Agreement have been completely read and explained by their attorneys, and that those terms are fully understood and voluntarily accepted.

S. 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.

T. Cooperation. The Parties agree fully to cooperate and to execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force to the basic terms and intent of this Agreement and which are not inconsistent with its terms.

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U. Counterparts. The Parties may sign this Agreement in counterparts and each signature, collectively, will constitute a binding agreement though all signatures may not appear on one instrument.

I have read the foregoing Agreement and I accept and agree to the provisions it contains and sign the Agreement voluntarily with full understanding of its consequences.

Dated: 12/1/2021

DocuSigned by:
Vanessa Ticas
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Vanessa Ticas

NUTIVA

Dated: December 2, 2021 | 12:10 PM EST

DocuSigned by:
Steven Naccarato
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Steven Naccarato, CEO

APPROVED AS TO FORM:

KOUL LAW FIRM

Dated: 12/1/2021

Nazo Koulloukian
Nazo Koulloukian

LAW OFFICES OF SAHAG MAJARIAN, II

Dated: 12/1/2021

DocuSigned by:
Sahag Majarian
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Sahag Majarian, II
Attorneys for Plaintiff

GORDON REES SCULLY MANSUKHANI, LLP

Dated: December 2, 2021 | 9:12 AM PST

DocuSigned by:
Natalie B. Fujikawa
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Linda M. Moroney
Natalie B. Fujikawa
Attorneys for Defendant