

FILED

KERN COUNTY SUPERIOR COURT
03/14/2023

BY Fogerson, Vickie
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN

JOSE AGUILERA, individually, and on behalf of
others similarly situated,

Plaintiff,

vs.

WM. BOLTHOUSE FARMS, INC., a Michigan
corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No. BCV-21-100160-BCB

*Assigned for All Purposes to
The Hon. Bernard C. Barmann, Jr., Div. H*

~~PROPOSED~~ FURTHER ORDER AND
JUDGMENT

Trial Date: None Set
Date Action Filed: January 25, 2021

1 Plaintiff Jose Aguilera's ("Plaintiff") unopposed Motion for Approval of PAGA Settlement came
2 on for hearing on January 20, 2023, at 8:30 a.m., before the Honorable Bernard C. Barmann, Jr. in Division
3 H of the above-entitled court. After considering the Parties' PAGA Representative Action Settlement
4 and Release Agreement (the "Settlement Agreement") and supporting Exhibits, the Unopposed Motion
5 for Approval of PAGA Settlement, as well as the Memorandum of Points and Authorities and Declarations
6 of Shaun Markley filed in support thereof, on January 20, 2023, the Court entered an Order Granting
7 Plaintiff's Unopposed Motion For Approval Of Private Attorneys General Act Settlement. The Court now
8 enters this Further Order and Judgment as requested by the Parties, including to approve Exhibit A to the
9 Settlement Agreement, and to enter judgment on the Settlement.

10 1. Pursuant to Labor Code section 2699, subdivision (1)(2), the Court previously approved the
11 Settlement Agreement, and now also approves the Notice to be sent with settlement checks to PAGA
12 Settlement Employees, attached as Exhibit A.

13 2. The Court's approval includes the "Release" set forth in Section IV.5. of the Settlement
14 Agreement, that releases Defendant and the Released Parties from any and all Released PAGA Claims as
15 defined in the Settlement Agreement.

16 3. The Court hereby enters Judgment in accordance with the terms of the Settlement
17 Agreement and this Order and Judgment.

18 4. As stated in the Settlement Agreement, "Release as to PAGA Settlement Employees," and
19 in accordance with California law, as stated in *Arias v. Sup. Ct.* 46 Cal. 4th 969, 985 (2009), a judgment
20 "in a representative action brought by an aggrieved employee under the Labor Code Private Attorneys
21 General Act of 2004 ... is binding not only on the named employee plaintiff but also on government
22 agencies and any aggrieved employees not a party to the proceeding." Thus, the named Plaintiff, the
23 LWDA and related state agencies, and all PAGA Settlement Employees are bound by this Judgment.

24 5. Without affecting the finality of the Judgment or the Settlement, the Court shall retain
25 jurisdiction over the above-captioned action and the Parties solely for purposes of implementing and
26 enforcing the terms of the Settlement and Judgment entered herein.

27 6. The Settlement Agreement is not an admission by Defendant Wm. Bolthouse Farms, Inc.
28

1 (“Defendant”), nor is this Order and Judgment a finding of validity of any allegations or of any
2 wrongdoing by Defendant. Neither this Order and Judgment, the Settlement Agreement, nor any other
3 documents referred to herein, may be construed as, or may be used as, an admission of any fault,
4 wrongdoing, omission, or liability whatsoever by or against Defendant or other Releasees.

5 7. Plaintiff’s representative action is hereby DISMISSED WITH PREJUDICE.

6 8. Within ten (10) days of entry of this Order, Plaintiff shall provide to the LWDA a copy of
7 this Order pursuant to Labor Code section 2699, subdivision (1)(3).
8

9 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

10
11 DATE: March 14, 2023



12 Honorable Bernard C. Barmann, Jr.
13 Superior Court of California

14 Signed: 3/14/2023 01:05 PM

EXHIBIT A

<<FIRST_NAME>><<LAST_NAME>>

<<ADDRESS1>>

<<ADDRESS2>>

Re: Your Settlement Payment for Civil Penalties in *Jose Aguilera v. Wm. Bolthouse Farms, Inc.* PAGA Settlement

Enclosed is a check in the amount of \$____, which is your settlement payment for a portion of the civil penalties agreed to be paid in the settlement of a lawsuit (“Action”) entitled ***Jose Aguilera v. Wm. Bolthouse Farms, Inc.***, Kern County Superior Court Case No. BCV-21-100160-BCB (“*Aguilera*”).

The Plaintiff in the *Aguilera* Action sought civil penalties under the Private Attorneys General Act of 2004 (PAGA) for alleged violations of California Labor Code sections 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, and 1182.12. The Action claims that during the period from April 3, 2020 through March 5, 2021, Defendant Wm. Bolthouse Farms, Inc. should have factored its payment of an Essential Pay Bonus into the “regular rate of pay” for California non-exempt employees during workweeks that such employees were paid overtime wages, meal or rest break premium wages, or reporting time wages. Defendant disputes that the Essential Pay Bonus it provided at the beginning of the COVID-19 pandemic was required to be included in the regular rate for these payments.

The parties negotiated a settlement of this Action, and the Court signed an Order approving the settlement on January 20, 2023. The settlement covers allegedly aggrieved non-exempt California employees, including you, who according to Defendant’s records were paid an Essential Pay Bonus and overtime wages, meal or rest break premium wages, and/or reporting time wages, during the same workweek at any time from April 3, 2020, through March 5, 2021. As required by PAGA, 75% of the penalties agreed to be paid in the settlement will be recovered by the State of California Labor and Workforce Development Agency (LWDA), and 25% of the penalties will be paid to the covered employees, based on a formula that takes into account the number of weeks an employee was paid an Essential Pay Bonus and overtime wages, meal or rest break premium wages, and/or reporting time wages, during the same workweek at any time from April 3, 2020, through March 5, 2021. Under the settlement, the Plaintiff and the State have released the following PAGA Claims on behalf of you and all other alleged aggrieved employees:

Any and all individual and representative PAGA claims for civil penalties, associated attorney’s fees or costs, and any other applicable relief available under PAGA against Defendant and/or its related entities based on Labor Code violations that are alleged or that could have been reasonably alleged based on the facts and theories asserted in the Action or LWDA Letter, including claims based on alleged violations and recoverable penalties under Labor Code sections 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, and 1182.12,. This release applies to you, regardless of whether you cash your check, and regardless of whether this letter can be delivered to you.

If you have any questions about the enclosed check for your portion of the civil penalties for the PAGA settlement, you can contact the Settlement Administration (whose contact information is at the top of this letter).

Sincerely,

[Administrator]

1 **PROOF OF SERVICE**

2 I, Joseph Ding, am a citizen of the United States and employed in Santa Clara, California. I am
3 over the age of eighteen years and not a party to the within entitled action. My business address is 1400
4 Page Mill Road, Palo Alto, CA 94304. On March 8, 2023, I caused to be served copies of the within
5 document(s):
6

7 **[PROPOSED] FURTHER ORDER AND JUDGMENT**

- 8 ☐ by placing the document(s) listed above in a sealed envelope with postage thereon
9 fully prepaid, in the United States mail at Palo Alto, California, addressed as set
10 forth below.
11 ☐ by causing a true and correct copy of the document(s) listed above to be delivered
12 via overnight delivery by FedEx in a sealed envelope(s) with all fees prepaid at the
13 address(es) set forth below.
14 ☐ by causing the document(s) listed above to be personally served on the person(s) at
15 the address(es) set forth below.
16 ☒ by transmitting via e-mail or electronic transmission the document(s) listed above
17 to the person(s) at the e-mail address(es) set forth below.

18 Shaun Markley
19 Jake Schulte
20 Nicholas & Tomasevic LLP
21 225 Braodway, 19th Floor
22 San Diego, CA 92101
23 smarkley@nicholaslaw.org
24 jschulte@nicholaslaw.org
25 ecarrillo@nicholaslaw.org

Attorneys for Plaintiff Jose Aguilera

26 Executed on March 8, 2023, at Palo Alto, California. I declare under penalty of perjury under the
27 laws of the State of California that the above is true and correct.
28

29 
30 Joseph Ding