

MATTHEW GUTIERREZ, SBN 271206
 mg@gutierrezderham.com
 AMBER B. DERHAM, SBN 255853
 abd@gutierrezderham.com
 GUTIERREZ DERHAM LAW FIRM LLP
 6077 Coffee Rd., Ste 4
 Bakersfield, CA 93308
 Telephone: (323) 676-6676

Attorneys for Plaintiff, JEFFREY WOERTINK,
 individually and as a proxy for the State of California

FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF ORANGE

FEB 15 2023

DAVID H. YAMASAKI, Clerk of the Court

BY:  DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

[UNLIMITED CIVIL—COMPLEX]

JEFFREY WOERTINK, an individual, and as
 a proxy for the State of California,

Plaintiff,

vs.

AMBRY GENETICS CORPORATION, a
 corporation; and DOES 1 through 5, inclusive,

Defendants.

Case No.: 30-2021-01212424-CU-OE-CXC

*Assigned for All Purposes to the Honorable
 Williams D. Claster in Dept. CX-104*

**[PROPOSED] ORDER APPROVING
 PAGA SETTLEMENT
 (RELATED TO ROA # 70)**

Complaint Filed: July 22, 2021
 Trial Date: None Set

RES ID 73868564

The Court has read and considered the motion of Plaintiff JEFFREY WOERTINK ("Plaintiff") for approval of the Orange County Case No. 30-2021-01212424-CU-OE-CXC PAGA Settlement Agreement and PAGA Release between Plaintiff and Defendant AMBRY GENETICS CORPORATION ("Ambry") ("PAGA Settlement Agreement"), including the first contract modification, of the California Labor Code Private Attorneys General Act of 2004 ("PAGA") cause of action ("PAGA Action"), and all the supplemental briefing filed by the parties. The motion for approval of the parties' PAGA settlement is GRANTED. The Court finds the settlement is "fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and

1 to maximize enforcement of state labor laws.” *Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56, 72
2 (2021). The Court also approves the current form of the notice.

3 Defendants shall pay **\$77,500.00** as the Gross Settlement Amount (“GSA”) in settlement of the
4 PAGA Action. The relevant settlement period for the PAGA claims is from May 18, 2020, through
5 August 15, 2022 (“PAGA Period”). The group of allegedly aggrieved employees affected by the
6 Agreement are all current and former employees who worked remotely at least one pay period for
7 Ambry in California at any time during the PAGA Period (“Aggrieved Employees”).

8 Settlement payments shall be distributed by Phoenix Settlement Administrators
9 (“Administrator”). The Court orders the following distributions:

- 10 1. Attorneys’ fees in the amount of \$19,375.00, or 25% of the GSA of \$77,500.00. The Court
11 finds this amount to be a reasonable result in light of the quality of the result obtained, the
12 work performed by counsel, and the estimated lodestar. In addition, the Court notes that
13 because Plaintiff’s individual settlement is contingent upon approval of the PAGA
14 settlement, the two settlements are effectively one. In the Court’s experience, Plaintiff’s
15 counsel is likely receiving 40%-45% of the individual settlement as a contingent fee.
16 (Counsel declined to provide this information, citing confidentiality.) Because the two
17 settlements are properly considered a single overall settlement, the Court has considered the
18 amount counsel is recovering on the individual settlement in fixing the recovery from the
19 common fund of the PAGA settlement, ensuring a fair fee recovery from the total settlement
20 amount. In approving this fee award, the Court is not approving the hourly billing rates
21 proposed by counsel.
- 22 2. Litigation costs in the amount of \$9,891.31, representing the full amount sought.
- 23 3. Administration costs in the amount of \$4,950, per the Administrator’s bid.
- 24 4. The Court declines to award an enhancement to Plaintiff. Plaintiff is receiving a sizable
25 payment in exchange for settlement of his individual claims. This amount is more than
26 enough to compensate him for his participation in the overall settlement of individual and
27 PAGA claims.

5. Taking the above distributions into account, from the GSA of \$77,500.00, \$43,283.69 remains to be distributed as provided under PAGA. This amount shall be allocated 75% to the Labor and Workforce Development Agency ("LWDA") pursuant to Labor Code section 2699(i), and 25% to the Aggrieved Employees, calculated *pro rata* according to the number of pay periods the Aggrieved Employee worked during the PAGA Period. The Administrator will report the individual PAGA payments on IRS 1099 Forms.
6. For any Aggrieved Employee whose individual PAGA settlement check is uncashed and canceled after the 180 days void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.
7. The Court also approves the current form of the notice as provided in Exhibit J to the January 23, 2023, declaration of Matthew Gutierrez. The Administrator shall send the PAGA settlement checks to the Aggrieved Employees with the current form of the notice.
8. The Administrator is to file a declaration no later than **September 8, 2023** to confirm that the distribution of funds to aggrieved employees is complete. Upon receipt of the Administrator's declaration, the Court will determine whether further briefing or a hearing is necessary.
9. Upon this Court's approval of the Settlement and entering of judgment thereon, and upon Ambry's funding of the GSA, Plaintiff and Aggrieved Employees will ~~fully and finally~~ *be bound by the releases in the Settlement Agreement.* release and discharge Ambry and each of its past, present, and future parent companies, subsidiaries (direct or indirect), divisions, predecessors, concepts, related or affiliated companies, insurers, reinsurers, successors, and assigns, and each of their current and former shareholders, officers, directors, employees, attorneys, and agents thereof, both individually and in their business capacities, and each of their employee benefit plans and programs and the trustees, administrators, fiduciaries, and insurers of such plans and programs, both individually and in their business capacities ("Released Parties"), from any and all claims, liquidated or unliquidated, that were asserted or could have been asserted based on the facts set forth in the operative pleading in the PAGA Action and/or notice submitted to the LWDA

(LWDA-CM-832517-21) in connection with the PAGA Action, to recover civil penalties pursuant to PAGA for any alleged violations of Labor Code section 2802 by Defendant with respect to work performed for Ambry during the PAGA Period ("PAGA Released Claims"), and all claims for attorneys' fees and costs and statutory interest in connection therewith, which arose during the PAGA Period. The release of claims outlined above is binding on Plaintiff, the LWDA, the State of California, and all Aggrieved Employees of Ambry during the PAGA Period once the Settlement has been fully funded.

IT IS SO ORDERED.

Dated: _____

2-15-23



Hon. Judge Williams D. Claster
Judge of the Superior Court of the
State of California