

CASE NO. 30-2021-01212424-CU-OE-CXC PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Jeffrey Woertink (“Plaintiff”) and defendant Ambry Genetics Corporation (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against Defendant captioned *Jeffrey Woertink v. Ambry Genetics Corporation*, Orange County Superior Court Case No. 30-2021-01212424-CU-OE-CXC initiated on July 22, 2021, and pending in Superior Court of the State of California, County of Orange.
- 1.2. “Administrator” means Phoenix, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.
- 1.4. “Aggrieved Employee” consists of all current and former employees who worked remotely at least one pay period for Ambry in California at any time during the PAGA Period.
- 1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendant’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.
- 1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.
- 1.7. “Court” means the Superior Court of California, County of Orange.
- 1.8. “Defense Counsel” means Jackson Lewis, P.C.
- 1.9. “Gross Settlement Amount” means \$77,500.00 which is the total amount Defendant agrees to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, the Incentive Award, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator’s Expenses Payment.
- 1.10. “Incentive Award” means an award which must be approved by the Court to

compensate Plaintiff from the Gross Settlement Amount.

- 1.11. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.
- 1.12. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.13. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699(i).
- 1.14. “LWDA PAGA Payment” means the 75% of the Net Settlement Amount paid to the LWDA under Labor Code section 2699(i).
- 1.15. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Incentive Award Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to the LWDA as the LWDA PAGA Payment and to the Aggrieved Employees as Individual PAGA Payments.
- 1.16. “PAGA Counsel” means Gutierrez Derham Law Firm LLP, the attorneys representing the Plaintiff in the Action.
- 1.17. “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses Payment” mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.18. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.19. “PAGA Period” means the period from May 18, 2020, through the date of court approval.
- 1.20. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698 *et seq.*).
- 1.21. “PAGA Notice” means Plaintiff’s May 18, 2021, letter to Defendant and the LWDA (LWDA-CM-832517-21) providing notice pursuant to Labor Code section 2699.3.
- 1.22. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Net Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to LWDA in settlement of PAGA claims.

1.23. “Approval Order” means the proposed Court Order Granting Approval of PAGA Settlement.

1.24. “Released PAGA Claims” means the claims being released by the Plaintiff as described in Paragraph 6 below.

1.25. “Released Parties” means: Defendant 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.

1.26. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

2. RECITALS.

2.1. On May 18, 2021, pursuant to Labor Code section 2699.3, Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.

2.2. On July 22, 2021, Plaintiff commenced this Action by filing a Complaint alleging a PAGA cause of action against Defendant. Defendant denies the allegations in the Complaint, denies any failure to comply with the laws identified in the Complaint and denies any and all liability for the causes of action alleged.

2.3. On August 15, 2022, the Parties attended a full-day mediation. With the assistance of mediator Todd Smith, Esq., the Parties reached the following binding agreement to resolve the putative representative PAGA claims asserted the Action.

2.4. Prior to mediation, Plaintiff obtained, through formal discovery, Defendant’s reimbursement policies and job descriptions relevant to the Aggrieved Employees.

2.5. Defendant represents that it is not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Defendant agrees that is shall pay \$77,500.00 as the non-reversionary Gross Settlement Amount. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
 - 3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of thirty-three percent (33%) which is currently estimated to be \$25,575.00 and PAGA Counsel Litigation Expenses Payment of not more than \$10,600.00. Defendant will not oppose requests for Court approval of these payments. The Administrator shall issue a 1099 form to PAGA Counsel for such payments.
 - 3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed \$5,000.00.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$5,000.00, the Administrator will retain the remainder in the Net Settlement Amount.
 - 3.2.3. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of 75% of the Net Settlement Amount is allocated to the LWDA PAGA Payment and 25% of the Net Settlement Amount is allocated to the Individual PAGA Payments.
 - 3.2.3.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked

by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

- 3.2.4. To Plaintiff: An Incentive Award of \$1,000.00 subject to Court approval ("Incentive Award Payment"). The Administrator will issue a 1099 form to Plaintiff for the Incentive Award Payment.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1. Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are 890 Aggrieved Employees who worked a total of 34,392 PAGA Pay Periods through June 6, 2022.
- 4.2. Aggrieved Employee Data. Within 15 business days of the court approving the settlement, Defendant will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee's privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. The Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.
- 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 30 days after the court approves the settlement.
- 4.4. Payments from the Gross Settlement Amount. Within 21 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, Incentive Award Payment, the PAGA Counsel Fees Payment, and the PAGA Counsel Litigation Expenses Payment.
- 4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by on the void date.

- 4.4.2. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 14 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.
- 4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the 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.
- 4.4.4. The payment of Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.
- 5. RELEASES OF PAGA CLAIMS.** Upon Court approval of the Settlement and entering of judgment thereon, and upon Ambry's funding of the Gross Settlement Amount, Plaintiff and Aggrieved Employees will fully and finally 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 by Defendant with respect to work performed for Ambry during the PAGA Period ("PAGA Released Claims"), including claims for PAGA civil penalties based on alleged violations of Labor Code §§ 1102.5 and 2802, 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 approved by the Court and the Settlement has been fully funded.
- 6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.** Any of the Parties may prepare and file an application or motion for approval of this Settlement. Plaintiff, however, agrees to prepare and file the motion for approval. Plaintiff agrees that counsel for

Plaintiff will notify the LWDA of the settlement at the same time the settlement is submitted to the Court for approval, seek approval of the settlement, and perform any and all statutory tasks as required by law.

- 6.1 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting via Zoom or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting via Zoom or by telephone, and in good faith, to re-negotiate in good faith in an effort to obtain approval of the settlement.
- 6.2 Entry of Judgment. Plaintiff will submit a proposed judgment in conformity with this Agreement to be entered by the Court, which shall constitute a final and binding resolution of Plaintiff's PAGA claims herein, and which shall retain jurisdiction by the Court over Plaintiff's PAGA claims and this settlement pursuant to Cal. Code Civ. Proc. § 664.6.

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. The Parties have jointly selected Phoenix to serve as the Administrator. The Parties represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of providing 1099 forms.
- 7.3 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8. CONTINUING JURISDICTION OF THE COURT.

- 8.1 Pursuant to Code of Civil Procedure § 664.6, the Parties agree that the Court may retain jurisdiction for the purpose of enforcing full performance of the terms of this Agreement. In the event that one or more of the Parties institutes any motion, legal action, or other proceeding against any other Party or Parties to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, the successful Party or Parties shall be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs incurred in connection with any enforcement actions.
- 8.2 The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this

Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

9. ADDITIONAL PROVISIONS.

- 9.1 No Admission. This The Parties agree that this Agreement is not evidence that the allegations in the Action have any merit, nor does it constitute an admission of any wrongdoing by Ambry. Ambry does not admit to liability or to the suitability of this case for representative litigation other than for purposes of settlement. This Agreement will not be deemed admissible in any other proceeding or in this proceeding other than to effectuate these settlements.
- 9.2 Integrated Agreement. Upon execution by all Parties, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 9.3 Cooperation. The Parties agree to fully cooperate to obtain approval of this settlement, pursuant to the terms set forth herein. The Parties also pledge their good faith effort and fair dealing in effectuating the terms of this settlement of Plaintiff's representative PAGA claims asserted in the Action. The Parties will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 9.4 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 9.5 No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise. The Parties agree that 100% of each settlement payment constitutes penalties and/or other non-wage payments (each Aggrieved Employee may be issued an IRS Form 1099). The Parties understand that the Aggrieved Employees who receive any payment pursuant to the settlement of the Action shall be solely responsible for any and all of

their individual tax obligations associated with such settlements. Defendant reserves the right to seek indemnity from any Aggrieved Employee for any claims arising out of their non-payment of the taxes due on the settlements paid to them for the Action

- 9.6 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 9.7 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 9.8 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 9.9 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 9.10 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 9.11 Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 9.12 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (e.g. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 9.13 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.
- 9.14 Invalidity of Any Provision/Severability. Before declaring any provision of this Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents, so as to

define all provisions of this Agreement valid and enforceable. If any term or provision of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

- 9.15 Parties' Authority: The Parties as signatories hereto hereby represent that they are fully authorized to enter into this PAGA Agreement and bind the Parties to the terms and conditions hereof.

Date: 10 / 11 / 2022



Plaintiff Jeffrey Woertink

Date:

DocuSigned by:


By: Michelle Stover Smith, General Counsel for Defendant
Ambry Genetics Corporation

4862-8344-6323, v. 3