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FILED

DEC 19 2023

SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO
BY _____ DEPUTY

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO**

RAUL GRANADOS DELGADO, individually, and
on behalf of all others similarly situated,

Plaintiff,

vs.

KINGS RIVER FARMING, INC., a California
corporation; and DOES 1 through 10, inclusive,

Defendants

Case No.: 22CECG00736

[Hon. Kristi Culver Kapetan, Dept. 502]

**~~[PROPOSED]~~ ORDER GRANTING
PLAINTIFF'S RENEWED MOTION FOR
AN ORDER APPROVING SETTLEMENT
OF CLAIMS BROUGHT PURSUANT TO
THE PRIVATE ATTORNEYS GENERAL
ACT OF 2004**

*[Filed with Notice of Motion and Renewed
Motion for PAGA Settlement Approval, the
Declarations of Kane Moon, Plaintiff Delgado,
ILYM Group, Jarrett Gorlick, and Kari Nale in
Support of Motion, and [Proposed] Final
Judgment]*

PAGA APPROVAL HEARING:

Date: December 19, 2023
Time: 3:30 p.m.
Dept.: 502

Action Filed: March 10, 2022
Trial Date: Not Set

~~PROPOSED~~ ORDER

Plaintiff Raul Granados Delgado (“Plaintiff”) and Defendant Kings River Farming, Inc. (“Defendant”) (collectively, the “Parties”) have reached terms of a settlement of this Action alleging a cause of action for relief pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.* (“PAGA”).

Pursuant to PAGA, Plaintiff has filed a Renewed Motion for an Order Approving Settlement of Claims Brought Pursuant to the Private Attorneys General Act of 2004 (“Plaintiff’s Motion”), seeking approval of the Parties’ Private Attorneys General Act Settlement Agreement and Release (the “PAGA Settlement”). A true copy of the PAGA Settlement is attached as **Exhibit 1** to the Declaration of Kane Moon in Support of Plaintiff’s Renewed Motion for an Order Approving Settlement of Claims Brought Pursuant to the Private Attorneys General Act of 2004 (“Moon Decl.”). Defendant does not oppose Plaintiff’s Motion. (Declaration of Kari Nale in Support of Motion for Court Approval of Representative Action Settlement.) Specifically, Plaintiff moves for an order:

1. Granting approval of the terms of the PAGA Settlement pursuant to PAGA, including the gross amount of the settlement, the distributions to the California Labor and Workforce Development Agency (the “LWDA”) and Aggrieved Employees, the amounts allocated to attorneys’ fees and costs, and the amount allocated to the settlement administrator; and

2. Directing disbursement of the Gross Settlement Amount pursuant to the terms of the Agreement.

A summary of the key terms of the PAGA Settlement is as follows:

- (a) Aggrieved Employees. The Aggrieved Employees are: “All non-exempt employees who worked for Defendant in California from February 19, 2021 through March 19, 2023.” (PAGA Settlement, p.2.)
- (b) PAGA Period. The PAGA Period is: “the period from February 19, 2021 through March 19, 2023.” (PAGA Settlement, p.2.)
- (c) No Reversion. This Settlement is *non-reversionary*. (PAGA Settlement, ¶ 4.)

- (d) Gross Settlement Amount. Defendant agrees to pay a gross sum of **\$517,500.00**¹ (hereinafter referred to as the “Gross Settlement Amount” or “GSA”), subject to an escalator clause, which shall be used to paid Plaintiff’s Counsel attorneys’ fees and litigation costs and the settlement administrator’s costs; the remainder of the Gross Settlement Amount will be allocated as the PAGA Fund and paid to the Aggrieved Employees and LWDA for settlement of PAGA Penalties. (PAGA Settlement, ¶ 4.)
- (e) Escalator. The PAGA Settlement contains an escalator clause under which Defendant may owe more than \$517,500.00 as the GSA; under the escalator, should the number of compensable Pay Periods exceed 42,000 by 15% or more, Defendant has the option to either increase the GSA on a pro rata basis according to the number of additional compensable pay periods identified, or in the alternative, Defendant may end the PAGA Period at an earlier date such that the escalator is not triggered. (PAGA Settlement, ¶ 7.)
- (f) PAGA Fund. At least **\$316,393.87** will be available for distribution to the Aggrieved Employees and the LWDA. Of this amount, the LWDA will receive (75%) at least **\$237,295.40**, and Aggrieved Employees will receive (25%) at least **\$79,098.47**. (PAGA Settlement, ¶ 4.c.)
- (g) PAGA Counsel’s Fees. Plaintiff’s Counsel request an award of attorneys’ fees in the amount of **\$129,375.00**, which is **25%** of the GSA. (PAGA Settlement, ¶ 4.a.)
- (h) PAGA Counsel’s Costs. Plaintiff’s Counsel seek reimbursement of actual litigation costs, up to a maximum amount of \$20,000.00. (PAGA Settlement, ¶ 4.a.) Plaintiff’s Counsel have incurred actual costs in the amount of **\$18,931.13**. (Moon Decl., ¶ 14, Exh. 5.)
- (i) Settlement Administration Costs. Payment to Aggrieved Employees and other settlement administration duties will be accomplished through a third-party administrator, which shall be paid for its services up to a maximum amount of \$25,000.00. (PAGA Settlement, ¶ 4b.)

¹ Separate and apart from the Gross Settlement Amount, Defendant agrees to pay Plaintiff a General Release Payment. (PAGA Settlement, ¶ 2.) The GSA does not include this Payment to Plaintiff. (*Id.*)

The Parties have jointly selected ILYM Group, Inc., which has agreed to administer this Settlement for a flat fee amount of \$9,675.00. (Moon Decl., ¶ 16, Exh. 6.)

- (j) Uncashed Checks. Funds represented by checks that are returned as undeliverable or remain uncashed for more than 180 days after issuance will be tendered to the California State Controller's Unclaimed Property division in the name of each individual who did not negotiate their check during the 180-day negotiation period. (PAGA Settlement, ¶¶ 10.b.i, 10.c.)
- (k) Released Claims. In exchange for the GSA, Defendant shall be entitled to a full release from the LWDA, Plaintiff, and each and every Aggrieved Employee of the PAGA claims asserted in both Plaintiff's Complaint and the PAGA notice filed with the LWDA attached as Exhibit A to the PAGA Settlement.² (PAGA Settlement, ¶ 2.)
- (l) Notice to LWDA. Plaintiff's Counsel have affirmed that notice of the proposed PAGA Settlement was provided to the LWDA. (Moon Decl., ¶ 12, Exh. 4.)
- (m) Funding and Disbursements. Defendant shall fully fund the GSA by transmitting the funds to the Settlement Administrator within 35 calendar days of the Effective Date, and the Administrator shall issue payments within 14 calendar days of funding. (PAGA Settlement, ¶¶ 10.a–b.)
- (n) Effective Date. means the date of entry of the Court's order approving the PAGA Settlement. (PAGA Settlement, ¶ 1.)

The Court, having duly considered Plaintiff's Motion, the supporting declarations and exhibits thereto, including the PAGA Settlement, all other papers filed and proceedings had herein, and having reviewed the record in this Action, and good cause appearing,

IT IS HEREBY ORDERED AND DECREED AS FOLLOWS:

1. The Court now GRANTS approval of Plaintiff's Motion and the PAGA Settlement by way of this PAGA Approval Order. All capitalized terms used for purposes of this PAGA Approval Order have

² This comports with settled California Supreme Court authority. (*See Arias v. Superior Court* (2009) 46 Cal. 4th 969, 986 [concluding that "with respect to the recovery of civil penalties, nonparty employees as well as the government are bound by the judgment in an action brought under the act"].)

1 the same meaning as given in the PAGA Settlement, unless otherwise indicated.

2 2. The Court finds that the terms of the PAGA Settlement are reasonable. In granting settlement
3 approval, the Court has considered the factors identified in *O'Connor v. Uber Technologies* (N.D. Cal. Aug.
4 18, 2016) No. 13-CV-03826-EMC, 2016 WL 4398271, *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d
5 1011, *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, and other relevant authority providing a
6 coherent framework for evaluating this PAGA Settlement.

7 3. The Court finds the PAGA Settlement was the product of informed, non-collusive negotiations
8 conducted at arms' length by the Parties. In making these findings, the Court considered Defendant's
9 potential liability, the benefit to the State of California, allocation of settlement proceeds among Aggrieved
10 Employees, and the fact that settlement represents a compromise of the Parties' respective positions rather
11 than the result of a finding of liability at trial. The Court further finds that the terms of the Settlement have
12 no obvious deficiencies. The Court finds that the risks of further prosecution are substantial and include the
13 risks that (1) penalties would be reduced after evaluation of the totality of the circumstances, or (2) that no
14 penalties would be awarded for some or all of the alleged violations.

15 4. Plaintiff exhausted all administrative remedies required to bring the PAGA claims
16 asserted in this Action and is authorized to act as private attorney general with respect to the PAGA
17 claims being released under the terms of the PAGA Settlement. Pursuant to California Labor Code
18 section 2699(l)(2), the LWDA has been given timely notice of the PAGA Settlement, has not objected, and
19 is therefore bound by this PAGA Approval Order.

20 5. The Court identifies the Aggrieved Employees as:

21 All non-exempt employees who worked for Defendant in California from
22 February 19, 2021 through March 19, 2023 (the "PAGA Period").

23 6. The Court approves ILYM Group, Inc. to serve as the Settlement Administrator. The
24 Administrator will be paid pursuant to the PAGA Settlement's terms for such distribution, in the requested
25 amount of **\$9,675.00** out of the Gross Settlement Amount to effectuate Administration.

26 7. Pursuant to the PAGA Settlement, the amount distributed as the PAGA Fund shall be at
27 least **\$517,500.00**, less administration costs as well as attorneys' fees and litigation costs to Plaintiff's
28 Counsel. After the awards for PAGA Counsel's Fees and Costs and Administration Costs, the amount

1 remaining for distribution in the PAGA Fund is at least **\$316,393.87**. The LWDA shall receive 75% of the
2 PAGA Fund, which is at least **\$237,295.40**, and the Aggrieved Employees shall receive 25%, which is at
3 least **\$79,098.47**. In the event that the Settlement Administrator determines that the number of compensable
4 Pay Periods exceeds 42,000 by 15% or more, these amounts shall increase according to the provisions of
5 the escalator clause under the PAGA Settlement.

6 8. The Court appoints Plaintiff's Counsel of record Kane Moon, Allen Feghali, and
7 Charlotte Mikat-Stevens of Moon Law Group, PC as PAGA Counsel. KCK

8 KCK 9. The Court awards PAGA Counsel attorneys' fees in the amount of **\$129,375.00**, which is
9 **25%** of the GSA. The Court finds that the award is reasonable compared to amounts routinely approved
10 in similar settlements and as guided by the California Supreme Court's decision concerning the awarding
11 of fees from monetary funds for class members. (*Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.
12 5th 480, 503). PAGA Counsel undertook representation on a contingency basis despite the uncertainty of
13 any fee award. PAGA Counsel were necessarily precluded from pursuing other potential sources of fees
14 because of work and fiduciary duties in connection with this Action. The Court observes that this is not a
15 class action; it is more akin to contingent representation with an additional requirement of Court review due
16 to the *qui tam* nature of a PAGA claim. Attorneys' fees that are fifty percent of a common fund are typically
17 considered the upper limit, with thirty to forty percent commonly awarded in cases where the settlement is
18 relatively small. (*See Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294 [stating that
19 most cases where 30-50 percent was awarded involved "smaller" settlement funds of under \$10 million].)
20 Based on these considerations, including a lodestar cross-check by the Court, the fee award of 33.3% of the
21 GSA is reasonable.

22 10. The Court awards PAGA Counsel reimbursement for actual litigation costs in the amount
23 of **\$18,931.13**. The finds these amounts were actually and necessarily incurred by PAGA Counsel in this
24 Action.

25 11. Nothing in this PAGA Approval Order or the PAGA Settlement will be construed as an
26 admission or concession by any party.

27 12. Upon entry of this PAGA Approval Order, the Parties and the Settlement Administrator
28 shall effectuate all terms of the PAGA Settlement based on the provisions and timelines set forth therein.

1 13. Upon subsequent entry of a Final Judgment Order, PAGA claims are released by Plaintiff,
2 the LWDA, and the Aggrieved Employees as follows:

3 The Parties agree and acknowledge that, to the maximum extent permitted by law, the
4 final judgment entered pursuant to this settlement will bind all those who would be bound
5 by a judgment if the action had been brought by the LWDA, including Plaintiff, the
6 LWDA, and the Aggrieved Employees, with respect to the recovery of civil penalties
7 under the California Private Attorneys General Act, California Labor Code § 2698, *et*
8 *seq.* only, against the Released Parties. It is expressly understood and agreed that this
9 settlement only includes a full release of the PAGA claims asserted in the Lawsuit and
10 both of Plaintiff's Complaint and/or PAGA Notice filed with the LWDA attached as
11 **Exhibit A** [to the PAGA Settlement], including any and all claims during the PAGA
12 Period, arising out of the PAGA claims asserted in the operative complaint and/or the
13 LWDA letter based upon the following: 1) failure to provide meal periods; 2) failure to
14 provide rest periods, 3) failure to pay overtime or minimum wages (including alleged off-
15 the-clock work, miscalculation of the regular rate of pay for overtime and paid sick leave),
16 4) failure to pay all wages due to discharged and quitting employees, 5) failure to furnish
17 accurate itemized wage statements, and 6) failure to reimburse for necessary business
18 expenses (all of the foregoing are collectively referred to as Plaintiff's "Released PAGA
19 Claims"). With the exception of Plaintiff, this settlement shall not impact Aggrieved
20 Employees' ability to assert claims other than PAGA claims arising from the alleged
21 foregoing violations of the Labor Code. Defendant agrees to enter into a separate
22 individual settlement agreement with Plaintiff for general release of his claims in
23 consideration for general release payment ("General Release Payment"). The Gross
24 Settlement Amount does not include the General Release Payment to Plaintiff.

15 14. The Court identifies the Released Parties as:

16 Defendant and any parent, subsidiary, affiliate, predecessor or successor, and all
17 agents, employees, contracting parties, joint employers, officers, directors and
18 attorneys thereof.

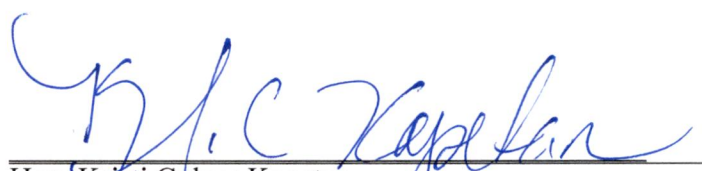
19 15. The action is DISMISSED WITH PREJUDICE, and each side is to bear its own costs and
20 attorneys' fees, except as provided by the PAGA Settlement.

21 16. The Court will enter Final Judgment in accordance with this PAGA Approval Order.

22 17. Notwithstanding entry of Final Judgment, the Court shall retain exclusive and continuing
23 jurisdiction over this action, the Parties, and the Aggrieved Employees for purposes of interpreting and
24 enforcing the terms, conditions, and obligations of the PAGA Settlement pursuant to California Code of
25 Civil Procedure section 664.6.

26 **IT IS SO ORDERED.**

27 Dated: 12/19/23

28 
Hon. Kristi Culver Kapetan
Judge of the Superior Court, Fresno County