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13 *AKA MARIA MORENO*

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF STANISLAUS**

16 MARIA ELENA GUTIERREZ aka MARIA
17 MORENO, individually, and on behalf of all others
18 similarly situated,

19 Plaintiff,

20 vs.

21 RATO BROS., INC., a California corporation; and
22 DOES 1 through 10, inclusive,

23 Defendants

Case No.: CV-23-001816

[Hon. John R. Mayne, Dept. 21]

~~AMENDED PROPOSED~~ ORDER
GRANTING PLAINTIFF'S MOTION FOR
APPROVAL OF PAGA SETTLEMENT

[Filed with (1) [Amended Proposed] Final
Judgment]

PAGA APPROVAL HEARING:

Date: October 8, 2024

Time: 8:30 a.m.

Dept.: 21

Complaint filed: April 6, 2023

Trial date: Not set

~~AMENDED PROPOSED~~ ORDER

Plaintiff Maria Elena Gutierrez aka Maria Moreno ("Plaintiff") and Defendant Ratto Bros., Inc. ("Defendant") (individually, a "Party," and collectively, the "Parties") have reached a settlement of the above-captioned matter (the "Action") alleging a cause of action for relief pursuant to the California Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.* ("PAGA"). Pursuant to PAGA, Plaintiff has filed Motion for Approval of PAGA Settlement ("Plaintiff's Motion") seeking approval of the Parties' PAGA Settlement Agreement (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 Motion ("Moon Decl."). Specifically, Plaintiff moves for an order:

1. Granting approval of the terms of the PAGA Settlement pursuant to Labor Code section 2699(1)(2), including the gross amount of the settlement, the distributions to the California Labor and Workforce Development Agency (the "LWDA") and Aggrieved Employees for PAGA Penalties, the amounts allocated to attorneys' fees and costs, and the amount allocated to the settlement administrator;

2. Directing disbursement of the Gross Settlement Amount pursuant to the terms of the PAGA Settlement; and

3. Retaining continuing jurisdiction over the Parties, their settlement, and this Action.

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

- (a) Aggrieved Employees. The Aggrieved Employees are: "Plaintiff and all non-exempt current and former employees of Defendant who worked at Defendant's packing house in Stanislaus County, California at any time during the PAGA Period." (PAGA Settlement, ¶ 1.4.)
- (b) PAGA Period. The PAGA Period is: "the period from April 4, 2022, to June 26, 2024." (PAGA Settlement, ¶ 1.23.)
- (c) No Reversion. This Settlement is *non-reversionary*. (PAGA Settlement, ¶ 3.1.)
- (d) Gross Settlement Amount. Defendant agrees to pay a gross sum of **\$225,000.00** (the "GSA"), subject to potential increase under an escalator clause, which shall be used to pay the PAGA Counsel Fees Payment, the PAGA Counsel Litigation Expenses Payment, the Administration Expenses Payment, and the LWDA PAGA Payment; the remainder of the GSA will be paid to the Aggrieved Employees through Individual PAGA Payments for

1 settlement of the Released PAGA Claims. (PAGA Settlement, ¶¶ 1.11, 8.)

2 (e) Escalator. The PAGA Settlement contains an escalator clause under which Defendant will
3 owe more than \$225,000.00 as the GSA if the number of compensable PAGA Pay Periods
4 exceeds 6,550 by 10% or more (i.e., if the actual number is 7,205 or more), in which case
5 Defendant has agreed to make a pro-rata increase to the GSA equal to the percentage
6 increase in PAGA Pay Periods above 7,204. (PAGA Settlement, ¶ 8.)

7 (f) PAGA Pay Periods. A PAGA Pay Period is: “any pay period during which an Aggrieved
8 Employee worked for Defendant in California for at least one day during the PAGA Period.
9 (PAGA Settlement, ¶ 1.21.)

10 (g) PAGA Penalties. The amount allocated as PAGA Penalties is at least **\$130,988.67**, which
11 will be distributed to as 25% to Aggrieved Employees and 75% to the LWDA. (PAGA
12 Settlement, ¶¶ 1.22, 3.2.3; Moon Decl., ¶ 13 [seeking only \$16,461.33 for litigation costs].)
13 Of this amount, the LWDA will receive (75%) at least **\$98,241.50**, and Aggrieved
14 Employees will receive (25%) at least **\$32,747.17**. (PAGA Settlement, ¶ 3.2.3; Moon Decl.,
15 ¶ 13.)

16 (h) PAGA Counsel Fees Payment. Plaintiff’s Counsel request an award of attorneys’ fees in the
17 amount of **\$74,250.00**, which is 33% of the GSA. (PAGA Settlement, ¶ 3.2.1.)

18 (i) PAGA Counsel Litigation Expenses Payment. Pursuant to the PAGA Settlement, Plaintiff’s
19 Counsel seek reimbursement of actual litigation costs, up to a maximum amount of
20 \$20,000.00. (PAGA Settlement, ¶ 3.2.1.) Specifically, Plaintiff’s Counsel have incurred
21 actual costs in the amount of, and seek reimbursement for, **\$16,461.33**. (Moon Decl., ¶ 13,
22 Exh. 4.)

23 (j) Administration Expenses Payment. Payments to Aggrieved Employees and other settlement
24 administration duties will be accomplished through a third-party administrator, which shall
25 be paid for its services up to a maximum amount of \$3,300.00. (PAGA Settlement, ¶ 3.2.2.)
26 The Parties jointly selected Simpluris, Inc., which has agreed to administer this Settlement
27 for a fixed fee of \$2,750 with a capped fee of \$3,300.00. (Moon Decl., ¶ 14, Exh. 5.)

28 (k) Uncashed Checks. Funds represented by checks that are returned as undeliverable or remain

1 uncashed for more than 180 days after issuance will be tendered to the California State
2 Controller's Unclaimed Property division in the name of each individual who did not cash
3 their check within the 180-day period. (PAGA Settlement, ¶ 4.3.1.)

4 (l) Released PAGA Claims. Upon the Court's Approval Order and Defendant's payment to the
5 Administrator of all funds owed in settlement of the Action, the LWDA and all Aggrieved
6 Employees, on behalf of themselves and their respective representatives, agents, attorneys,
7 heirs, and assigns, will release the Released Parties from all claims for civil penalties under
8 PAGA that arose during the PAGA Period and that were alleged, or that reasonably could
9 have been alleged based on the facts asserted, in Plaintiff's April 4, 2023 PAGA Notice and
10 in Plaintiff's Operative Complaint ("Released PAGA Claims").¹ (PAGA Settlement, ¶ 5.)

11 (m) Operative Complaint. The Parties agree that Plaintiff's Operative Complaint is: "Plaintiff's
12 First Amended Class and Representative Action Complaint, as modified by the Court's
13 August 11, 2023, dismissal order" "dismissing the first eight causes of action and ordering
14 this Action proceed with litigation of the PAGA claims." (PAGA Settlement, ¶ 2.1.)

15 (n) Notice to LWDA. Plaintiff's Counsel have affirmed that notice of the proposed PAGA
16 Settlement was provided to the LWDA prior to filing Plaintiff's Motion. (Moon Decl., ¶ 11,
17 Exh. 3.)

18 (o) Funding and Disbursements. Defendant shall fully fund the GSA by transmitting the funds
19 to the Administrator no later than 14 calendar days of the Court's Approval Order, and
20 the Administrator shall issue payments within 14 calendar days of funding. (PAGA
21 Settlement, ¶¶ 4.2–3.)

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

25 **HEREBY ORDERS AND DECREES AS FOLLOWS:**

26 _____
27 ¹ This comports with settled California Supreme Court authority. (*See Arias v. Superior Court* (2009) 46
28 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 1. The Court now GRANTS approval of Plaintiff's Motion and the PAGA Settlement by way of
2 this PAGA Approval Order. All capitalized terms used for purposes of this PAGA Approval Order have the
3 same meaning as given in the PAGA Settlement, unless otherwise indicated.

4 2. The Court finds that the terms of the PAGA Settlement are reasonable. In granting settlement
5 approval, the Court has considered the factors identified in *O'Connor v. Uber Technologies* (N.D. Cal. 2016)
6 201 F.Supp.3d 1110, *Villalobos v. Calandri Sunrise Farm LP* (C.D. Cal. July 22, 2015) No. CV 12-2615
7 PSG (JEMx), 2015 WL 12732709, and other relevant authority providing a coherent framework for
8 evaluating this PAGA Settlement.

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

17 4. The Court finds that Plaintiff exhausted all administrative remedies required to bring the
18 PAGA claims asserted in this Action and is authorized to act as private attorney general with respect
19 to the PAGA claims being released under the terms of the PAGA Settlement. Pursuant to California
20 Labor Code section 2699(1)(2), the LWDA has been given timely notice of the PAGA Settlement, has not
21 objected, and is therefore bound by this PAGA Approval Order.

22 5. The Court identifies the "Aggrieved Employees" as:

23 Plaintiff and all non-exempt current and former employees of Defendant who
24 worked at Defendant's packing house in Stanislaus County, California at any
25 time during the PAGA Period. The "PAGA Period" means the period from April
26 4, 2022, to June 26, 2024.

26 6. The Court approves Simpluris, Inc. to serve as the Administrator of this PAGA Settlement.
27 The Court awards the Administrator an Administration Expenses Payment in an amount not to exceed
28 **\$3,300.00** to effectuate administration of the PAGA Settlement.

1 7. Pursuant to the PAGA Settlement, the GSA shall be at least **\$225,000.00**. After deducting
2 the PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration
3 Expenses Payment, the amount remaining for distribution as PAGA Penalties is at least **\$130,988.67**. The
4 LWDA shall receive 75% of the PAGA Penalties, which is at least **\$98,241.50**, and the Aggrieved Employees
5 shall receive 25%, which is at least **\$32,747.17**. In the event that the Administrator determines the number of
6 compensable PAGA Pay Periods exceeds 6,550 by 10% or more, the GSA and foregoing amounts to the
7 LWDA and Aggrieved Employees shall increase according to the provisions of the escalator clause under the
8 PAGA Settlement.

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

11 9. The Court awards to PAGA Counsel a PAGA Counsel Fees Payment in the amount of
12 **\$74,250.00**, which is 33% of the GSA, as payment for reasonable attorneys' fees. The Court finds that the
13 award is reasonable compared to amounts routinely approved in similar settlements and as guided by the
14 California Supreme Court's decision concerning the awarding of fees from monetary funds for class
15 members. (*Laffitte v. Robert Half International, Inc.* (2016) 1 Cal. 5th 480, 503.) PAGA Counsel undertook
16 representation on a contingency basis despite the uncertainty of any fee award. PAGA Counsel were
17 necessarily precluded from pursuing other potential sources of fees because of work and fiduciary duties
18 owed in connection with this Action. The Court observes that this is not a class action; it is more akin to
19 contingent representation with an additional requirement of Court review due to the *qui tam* nature of a PAGA
20 claim. Attorneys' fees that are fifty percent of a common fund are typically considered the upper limit, with
21 thirty to forty percent commonly awarded in cases where the settlement is relatively small. (*See Van Vranken*
22 *v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294 [stating that most cases where 30–50 percent was
23 awarded involved “smaller” settlement funds of under \$10 million].) Based on these considerations, and after
24 conducting a lodestar cross-check, by the Court, the Court finds the fee award of 33% of the GSA is
25 reasonable and fair.

26 10. The Court awards to PAGA Counsel a PAGA Counsel Litigation Expenses Payment in the
27 amount of **\$16,461.33** as reimbursement for actual litigation costs. The Court finds these amounts were
28 actually and necessarily incurred by PAGA Counsel in this Action.

1 11. Nothing in this PAGA Approval Order or the PAGA Settlement will be construed as an
2 admission or concession by any Party.

3 12. Upon entry of this PAGA Approval Order, the Parties and the Administrator shall effectuate
4 all terms of the PAGA Settlement based on the provisions and timelines set forth therein and consistent with
5 this PAGA Approval Order.

6 13. Upon the Court's Approval Order and Defendant's payment to the Administrator of all funds
7 owed in settlement of the Action, the LWDA and all Aggrieved Employees, on behalf of themselves and their
8 respective representatives, agents, attorneys, heirs, and assigns, will release the Released Parties from all
9 claims for civil penalties under PAGA that arose during the PAGA Period and that were alleged, or that
10 reasonably could have been alleged based on the facts asserted, in Plaintiff's April 4, 2023 PAGA Notice and
11 in Plaintiff's Operative Complaint ("Released PAGA Claims").

12 14. The Court identifies the "Released Parties" as:

13 Defendant and each of its former and present owners, parents, and subsidiaries,
14 and all their former and present officers, directors, members, managers,
15 consultants, partners, shareholders, joint venturers, agents, predecessors,
successors, assigns, accountants, insurers, reinsurers, and/or legal representatives.

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

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

19 17. Pursuant to California Code of Civil Procedure section 664.6 and notwithstanding entry of
20 Final Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for
21 purposes of (i) enforcing the Settlement and/or Judgment, (ii) addressing settlement administration matters,
22 and (iii) addressing such post-Judgment matters as are permitted by law.

23 18. The Court sets a Compliance Hearing for **July 8, 2025, at 8:30 a.m. in Department 21**. The
24 Settlement Administrator is directed to file a declaration regarding compliance at least 14 days prior to the
25 hearing. If all the terms of the Settlement Agreement have been satisfied, the hearing will be taken off-
26 calendar.

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1 IT IS SO ORDERED.

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3 Dated:

2016/07/04

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Hon. John R. Mayne

Judge of the Superior Court, Stanislaus County