

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF TULARE

JONATHAN SANTIAGO and ADRIAN
AVILA, individuals, on behalf of themselves,
on behalf of all persons similarly situated, and
on behalf of other aggrieved employees
pursuant to the California Private Attorneys
General Act,

Plaintiffs,

v.

CIGNA HEALTH & LIFE INSURANCE
COMPANY, a unknown business entity; and
DOES 1 through 100, Inclusive,

Defendants.

CASE NO.: **VCU283599**
Consolidated for All Purposes with
Case No. VCU284920

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: April 28, 2022
Hearing Time: 8:30 a.m.

Judge: Hon, David C. Mathias
Dept.: 1

Action Filed: July 15, 2020
Trial Date: None Set

1 This matter, having come before the Honorable David C. Mathias of the Superior Court of
2 the State of California, in and for the County Tulare, on April 28, 2022, for the motion by
3 Plaintiffs Jonathan Santiago and Adrian Avila (“Plaintiffs”) for preliminary approval of the class
4 settlement with Defendant Cigna Health & Life Insurance Company (“Defendant”). The Court,
5 having considered the briefs, argument of counsel and all matters presented to the Court and good
6 cause appearing, hereby GRANTS Plaintiffs’ Motion for Preliminary Approval of Class Action
7 Settlement.

8
9 **IT IS HEREBY ORDERED:**

10 1. The Court preliminarily approves the Class Action Settlement Agreement
11 (“Agreement”) attached as Exhibit #1 to the Declaration of Kyle Nordrehaug in Support of
12 Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement. This is based on the
13 Court’s determination that the Settlement set forth in the Agreement is within the range of possible
14 final approval, pursuant to the provisions of Section 382 of the California Code of Civil Procedure
15 and California Rules of Court, rule 3.769.

16 2. This Order incorporates by reference the definitions in the Agreement, and all
17 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

18 3. The Gross Settlement Amount is Three Million Nine Hundred Twenty-Five
19 Thousand Dollars (\$3,925,000.00). It appears to the Court on a preliminary basis that the
20 settlement amount and terms are fair, adequate and reasonable as to all potential Class Members
21 when balanced against the probable outcome of further litigation and the significant risks relating
22 to certification, liability and damages issues. It further appears that investigation and research
23 have been conducted such that counsel for the Parties are able to reasonably evaluate their
24 respective positions. It further appears to the Court that settlement at this time will avoid
25 substantial additional costs by all Parties, as well as avoid the delay and risks that would be
26 presented by the further prosecution of the Action. It further appears that the Settlement has been
27 reached as the result of serious and non-collusive, arms-length negotiations. The Court therefore
28

1 preliminarily finds that the Settlement is fair, adequate, and reasonable when balanced against the
2 probable outcome of further litigation and the significant risks relating to certification, liability,
3 and damages issues.

4 4. The Agreement specifies for an attorneys' fees award not to exceed 35% of the
5 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$30,000, and
6 proposed Class Representative Service Payments to the Plaintiffs in an amount not to exceed
7 \$7,500 each. The Court will not approve the amount of attorneys' fees and costs, nor the amount
8 of any service award, until the Final Approval Hearing. Plaintiffs will be required to present
9 evidence supporting these requests, including lodestar, at the time of final approval.

10 5. The Court recognizes that Plaintiffs and Defendant stipulate and agree to
11 certification of a class for settlement purposes only. This stipulation will not be deemed
12 admissible in this or any other proceeding should this Settlement not become final. For settlement
13 purposes only, the Court conditionally certifies the following Class: "all individuals who are or
14 were employed by Defendant Cigna Health & Life Insurance Company in California who were
15 classified as non-exempt employees during the Class Period." The Class Period is August 19,
16 2016 to January 21, 2022.

17 6. The Court concludes that, for settlement purposes only, the Class meets the
18 requirements for certification under section 382 of the California Code of Civil Procedure in that:
19 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
20 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
21 community of interest amongst the members of the Class with respect to the subject matter of the
22 litigation; (c) the claims of the Plaintiffs are typical of the claims of the members of the Class; (d)
23 the Plaintiffs can fairly and adequately protect the interests of the members of the Class; (e) a class
24 action is superior to other available methods for the efficient resolution of this controversy; and (f)
25 counsel for the Class is qualified to act as counsel for the Class and the Plaintiffs are adequate
26 representatives of the Class.

27 7. The Court provisionally appoints Plaintiffs as the representatives of the Class. The
28

1 Court provisionally appoints Edwin Aiwarzian, Arby Aiwarzian, and Joanna Ghosh of Lawyers *for*
2 Justice, PC and Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik of
3 Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class.

4 8. The Court hereby approves, as to form and content, the Notice of Proposed
5 Settlement of Class Action and Hearing Date for Final Court Approval (“Class Notice”) attached
6 to the Agreement as Exhibit A. The Court finds that the Class Notice appears to fully and
7 accurately inform the Class of all material elements of the proposed Settlement, of the Class
8 Members’ right to be excluded from the Class by submitting a written opt-out request, and of each
9 member’s right and opportunity to object to the Settlement. The Court further finds that the
10 distribution of the Class Notice substantially in the manner and form set forth in the Agreement
11 and this Order meets the requirements of due process, is the best notice practicable under the
12 circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The
13 Court orders the mailing of the Class Notice by first class mail, pursuant to the terms set forth in
14 the Agreement.

15 9. The Court hereby appoints ILYM Group as Settlement Administrator. No later
16 than fourteen (14) calendar days after preliminary approval of the Settlement by the Court,
17 Defendant shall provide to the Settlement Administrator with the Class Data. The Settlement
18 Administrator will perform address updates and verifications as necessary prior to the mailing of
19 the Class Notice. Using best efforts to mail it as soon as possible, and in no event later than
20 fourteen (14) calendar days after receiving the Class Data, the Settlement Administrator will mail
21 the Class Notice to all Class Members via first-class U.S. Mail.

22 10. The Court hereby preliminarily approves the proposed procedure for exclusion
23 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
24 from the Class as provided in the Class Notice by following the instructions for requesting
25 exclusion from the Class that are set forth in the Class Notice. All requests for exclusion must be
26 postmarked by no later than sixty (60) calendar days after the date of the mailing of the Class
27 Notice and received by the Settlement Administrator. If the Class Notice Packet is re-mailed, the
28

1 response date for requests for exclusion will be extended an additional 15 days. Any such person
2 who chooses to opt out of and be excluded from the Class will not be entitled to any recovery
3 under the Settlement and will not be bound by the Settlement or have any right to object, appeal or
4 comment thereon. Class Members who have not requested exclusion shall be bound by all
5 determinations of the Court, the Agreement and the Judgment. A request for exclusion may only
6 opt out that particular individual, and any attempt to effect an opt out of a group, class, or subclass
7 of individuals is not permitted and will be deemed invalid. Subject to the Court's final approval of
8 the Settlement, those Aggrieved Employees that worked during the PAGA Period May 11, 2019
9 through January 21, 2022, will still be paid their allocation of the PAGA Payment and will remain
10 subject to the release of the Released PAGA Claims in the Agreement regardless of any request
11 for exclusion from the Class.

12 11. Any Class Member who has not opted out may appear at the final approval hearing
13 and may object or express the Member's views regarding the Settlement, and may present
14 evidence and file briefs or other papers that may be proper and relevant to the issues to be heard
15 and determined by the Court as provided in the Notice. Class Members will have sixty (60)
16 calendar days from the date of the mailing of the Class Notices to submit their written objections
17 to the Settlement Administrator in accordance with the instructions in the Class Notice. If the
18 Class Notice Packet is re-mailed, the response date for written objections will be extended an
19 additional 15 days. Alternatively, Class Members may appear at the Final Approval Hearing to
20 make oral objections.

21 12. A Final Approval Hearing shall be held before this Court on _____
22 _____ at _____ in Department 1 at the Tulare County Superior Court to determine
23 all necessary matters concerning the Settlement, including: whether the proposed settlement of the
24 Action on the terms and conditions provided for in the Agreement is fair, adequate and reasonable
25 and should be finally approved by the Court; whether the Final Approval Order and Judgment
26 should be entered herein; whether the plan of allocation contained in the Agreement should be
27 approved as fair, adequate and reasonable to the Class Members; and to finally approve attorneys'
28

1 fees and costs, the service awards, and the expenses of the Settlement Administrator. All papers in
2 support of the motion for final approval and the motion for attorneys' fees, costs and service
3 awards shall be filed with the Court and served on all counsel no later than sixteen (16) court days
4 before the hearing and both motions shall to be heard at the Final Approval Hearing.

5 13. Neither the Settlement nor any exhibit, document, or instrument delivered
6 thereunder shall be construed as a concession or admission by Defendant in any way that the
7 claims asserted have any merit or that this Action was properly brought as a class or representative
8 action, and shall not be used as evidence of, or used against Defendant as, an admission or
9 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
10 omission by Defendant or with respect to the truth of any allegation asserted by any person.
11 Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit,
12 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts
13 thereof, shall in any event be construed as, offered or admitted in evidence as, received as or
14 deemed to be evidence for any purpose adverse to the Defendant, including, but not limited to,
15 evidence of a presumption, concession, indication or admission by Defendant of any liability,
16 fault, wrongdoing, omission, concession or damage.

17 14. In the event the Settlement does not become effective in accordance with the terms
18 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
19 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
20 and the Parties shall revert to their respective positions as of before entering into the Agreement,
21 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
22 including all available defenses and affirmative defenses, and arguments that any claim in the
23 Action could not be certified as a class action and/or managed as a representative action. In such
24 an event, the Court's orders regarding the Settlement, including this Order, shall not be used or
25 referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of
26 the Agreement with respect to the effect of the Agreement if it is not approved.

1 15. The Court reserves the right to adjourn or continue the date of the final approval
2 hearing and all dates provided for in the Agreement without further notice to Class Members, and
3 retains jurisdiction to consider all further applications arising out of or connected with the
4 proposed Settlement.

5 16. The Action is stayed and all trial and related pre-trial dates are vacated, subject to
6 further orders of the Court at the Final Approval Hearing.

7 **IT IS SO ORDERED.**

8
9 Dated: _____

HON. DAVID C. MATHIAS
JUDGE, SUPERIOR COURT OF CALIFORNIA