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Attorneys for Plaintiff and Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

MATTHEW ONG, as an individual and on behalf
of aggrieved employees,

Plaintiff,

vs.

EHEALTHINSURANCE SERVICES, INC., a
Delaware corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 22CV399893

[Assigned for all purposes to the Hon. Charles F.
Adams, Dept. 7]

**DECLARATION OF MAI TULYATHAN IN
SUPPORT OF PLAINTIFF'S MOTION TO
APPROVE SETTLEMENT AGREEMENT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT**

Date: June 6, 2024

Time: 1:30 P.M.

Dept.: 7

Complaint Filed: July 5, 2022

Trial Date: None

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1. I am an attorney at law, duly licensed to practice before all Courts in the State of California, and am with the law firm Diversity Law Group, counsel of record for Plaintiff Matthew Ong (“Plaintiff”). I have personal knowledge of the facts set forth below and if called to testify I could and would do so competently.

2. On April 29, 2022, Plaintiff provided written notice to the California Labor & Workforce Development Agency (“LWDA”) and Defendant eHealthInsurance Services, Inc. (“Defendant”) asserting claims for civil penalties pursuant to PAGA predicated on violations of Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, and 1197.1. Attached hereto as **Exhibit A** is a true and correct copy of Plaintiff’s April 29, 2022 PAGA notice to the LWDA.

4. On July 5, 2022, Plaintiff filed a concurrent PAGA action complaint, asserting a single cause of action for violation of Labor Code § 2698, *et seq.*, predicated on violations of Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, and 1197.1.

6. With respect to the regular rate claims, Plaintiff alleges that Defendant failed to pay employees meal and rest period premium wages at the correct regular rate of pay. In this regard, Plaintiff and employees earned non-discretionary remuneration, such as bonuses and incentives. During periods where Plaintiff and employees earned non-discretionary pay and were paid meal and rest period premiums, the non-discretionary remuneration was not factored into the calculation of the regular rate of

1 pay. Instead, Defendant paid meal and rest periods based on the base rate of pay only. Based on that,
2 Plaintiff alleges that Defendant underpaid meal and rest period premiums to its employees.

3 7. As a separate regular rate violation, Plaintiff alleges that Defendant failed to pay sick pay
4 wages at the correct regular rate of pay. Similar to Plaintiff's regular rate meal/rest period premium
5 claim, Plaintiff alleges that Defendant does not factor in non-discretionary remuneration into the
6 calculation of the regular rate of pay when paying sick pay wages.

7 8. Lastly, as a result of the claims above, Plaintiff asserts wage statement violations under
8 the PAGA.

9 9. Based on the above, Plaintiff alleges violations of Labor Code §§ 201-204, 226, 226.7,
10 246, 510, 512, 558, 1194, 1197, and 1197.1.

11 10. After commencement of the lawsuit, Defendant informed Plaintiff of the existence of an
12 arbitration agreement and the Parties met and conferred to discuss participating in early mediation. The
13 Parties subsequently agreed to participate in private mediation with wage-and-hour mediator Francis J.
14 Ortman III.

15 11. In connection with mediation, the Parties engaged in informal discovery. Defendant has
16 provided informal discovery pertaining to aggrieved employees during the PAGA period, the number of
17 pay periods at issue, Plaintiff's personnel file and wage statements, a sample of payroll records of the
18 PAGA group, as well as production of pertinent policies. The data provided allowed Plaintiff's counsel
19 to analyze liability and exposure in preparation for the mediation.

20 12. On April 13, 2023, the Parties participated in private mediation with wage-and-hour
21 mediator, Francis J. Ortman III. While the Parties did not reach a settlement at the mediation, the Parties
22 continued extended settlement negotiations following the mediation, facilitated by the mediator, and
23 ultimately reached the current settlement of Plaintiff's PAGA claims. In resolution of the PAGA claims,
24 the Parties entered into the Settlement Agreement of California Labor Code Private Attorneys General
25 Act Claims (the "Settlement Agreement" or "Settlement"), a true and correct copy of which is attached
26 hereto as **Exhibit B**.

27 13. Based on the foregoing and on their own independent investigation and evaluation,
28 Plaintiff's counsel is of the opinion that the PAGA settlement with Defendant for the consideration and

on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate, and is in the best interests of Plaintiff, the State of California, and the aggrieved employees.

14. From the inception of the case, Plaintiff's counsel has zealously represented the interests of the aggrieved employees. The settlement was obtained for the benefit of the aggrieved employees, as opposed to the individual Plaintiff.

SUMMARY OF THE PROPOSED SETTLEMENT

15. The "Aggrieved Employees" affected by this Settlement include "all current and former non-exempt employees of Defendant who worked in California at any time from April 29, 2021, through April 1, 2023." (Settlement Agreement at ¶ I.2.) The PAGA Period is defined as any time from April 29, 2021, through April 1, 2023. (*Id.* at ¶ I.14.)

16. Based upon Defendant's records, Defendant represents that the number of Aggrieved Employees during the PAGA Period is approximately 475 individuals. (*Id.* at ¶ I.2.) Defendant also represents that the total number of pay periods worked by Aggrieved Employees during the PAGA Period is approximately 12,500. (*Id.* at ¶ III.3.)

17. As set forth in the Settlement Agreement, the Parties have agreed that a total of Three Hundred Fifty Five Thousand Dollars (\$355,000.00) (the "Gross Settlement Amount") shall be paid by Defendant in settlement of the Action. (Settlement Agreement at ¶¶ I.7; III.2.) The terms of the Settlement Agreement provide for an award of attorneys' fees not to exceed \$118,333.33, and reimbursement of litigation costs of up to \$30,000.00 to Plaintiff's counsel; enhancement payment to Plaintiff in the amount of \$10,000.00 for serving as the PAGA representative; and settlement administration costs of up to \$4,750.00. (*Id.* at ¶ III.2.)

18. The balance of the Gross Settlement Amount remaining after deduction of the amounts above will be available for distribution to the LWDA and Aggrieved Employees (the balance of the Gross Settlement Amount remaining after the above deductions shall be referred to as the "Net Settlement Amount"). (*Id.* at ¶ I.12.) To the extent the Court approves the amounts listed above, the Net Settlement Amount is estimated to be approximately \$205,099.44.

19. Pursuant to the PAGA, seventy-five percent (75%) of the Net Settlement Amount, or approximately \$153,824.58, will be distributed to the LWDA for PAGA penalties. (*Id.* at ¶ I.11;

1 III.2.a.1.) The remaining twenty-five percent (25%) of the Net Settlement Amount, or approximately
2 \$51,274.86 will be distributed to the Aggrieved Employees. (Settlement Agreement at ¶ I.8; III.2.a.2.)

3 20. The portion of the Net Settlement Amount distributed to the Aggrieved Employees will
4 be distributed on a *pro rata* basis, based on the number of pay periods each Aggrieved Employee
5 worked as a non-exempt employee in California during the PAGA Period divided by the aggregate total
6 number of pay periods worked by all Aggrieved Employees as non-exempt employees in California
7 during the PAGA Period. (Settlement Agreement at ¶ IV.2.f.2.)

8 21. Based on the number of Aggrieved Employees, on a raw average, each Aggrieved
9 Employee may potentially recover approximately \$107.95 from the portion of the Net Settlement
10 Amount attributable to the Aggrieved Employees. The amount any particular Aggrieved Employee will
11 be entitled to recover will fluctuate depending on the number of pay periods he or she worked as a non-
12 exempt employee in California during the PAGA Period. This is fair, as it directly allocates greater
13 penalties to individual Aggrieved Employees who have allegedly suffered greater harm.

14 22. The Parties have agreed to the mailing of the Notice of Settlement to the Aggrieved
15 Employees. Attached hereto as **Exhibit C** is a true and correct copy of the Notice of Settlement.

16 23. The Parties have agreed to retain Phoenix Settlement Administrators to administer the
17 Settlement, with the administration costs estimated not to exceed \$4,750.00. Attached hereto as **Exhibit**
18 **D** is a true and correct copy of the settlement administration bid received from Phoenix Settlement
19 Administrators for administration of this settlement.

20 24. Aggrieved Employees will be subject to only a limited release strictly confined to the
21 civil penalties under the PAGA based on the facts alleged in the Action pertaining to violations of Labor
22 Code §§ 201-204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, and 1197.1, that accrued during the
23 PAGA Period, and nothing more.

24 **POTENTIAL CIVIL PENALTIES**

25 25. Based on the data provided by Defendant, Plaintiff calculated total exposure to be
26 approximately \$4,564,800.00, based on the following:

- 27 • \$1,250,000 for the off-the-clock violations (calculated based on 12,500 total pay periods
28 x \$100 penalty per violation);

- \$163,900 for the meal and rest period premium violations (calculated based on 1,639 pay periods where employees were received meal or rest period premium pay and non-discretionary remuneration in the same pay period x \$100 penalty per violation);
- \$25,900 for the sick pay regular rate violations (calculated based on 259 individuals with sick pay underpayment x \$100 penalty per violation);
- \$3,125,000 for the derivative wage statement violations (calculated based on 12,500 total pay periods x \$250 per pay period, pursuant to Labor Code § 226.3 and *Raines v. Coastal Pac. Food Dist.* (2018) 23 Cal. App. 5th 667).

26. The maximum penalty calculation assumes that Plaintiff will prevail on the merits. Here, Plaintiff asserts that his representative PAGA claims are based on the allegations that Defendant (a) failed to pay all minimum, regular, and overtime wages, and meal period premiums owed in violation of Labor Code §§ 201-204, 226.7, 510, 558, 1194, 1197, and 1197.1; (b) failed to pay employees meal period premium wages at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203, 226.7, and 512; (c) failed to pay employees rest period premium wages at the correct regular rate of pay that included all nondiscretionary remuneration, in violation of Labor Code §§ 201-203 and 226.7; (d) failed to pay employees sick pay at the correct regular rate of pay, in violation of Labor Code §§ 201-204 and 246; and (e) failed to provide accurate itemized wage statements in violation of Labor Code § 226.

27. Although Plaintiff is reasonably confident that he would prevail at trial, proceeding in litigation entails significant risk on the underlying merits of Plaintiff's theory, in addition to the still-developing law under PAGA.

28. While Plaintiff maintains that there does not exist any reason for reducing PAGA penalties, Plaintiff is aware that Defendant could make a compelling argument to the contrary. Defendant has denied violations of any applicable laws and denied liability for any claims asserted in the Action. In this regard, Defendants assert that they maintained lawful policies and practices in place. Defendant argued that it appropriately paid the premium payments for missed meal and rest periods. With respect to sick pay, Defendant contends that it appropriate pays sick pay under its paid time off policy. Furthermore, with respect to the off-the-clock claims, Defendant contends that it has also

1 revised its practices to pay for minutes spent for boot-up time as of July 23, 2023, which limits any
2 potentially recoverable PAGA penalties to the State of California and aggrieved employees. Defendant
3 also argues that the Court has discretion under PAGA to reduce the maximum allowable PAGA
4 penalties, or to decide not to award PAGA penalties at all. Should Defendant have prevailed on its
5 arguments or defenses above, the State of California and aggrieved employees would have been left with
6 minimal or zero recovery.

7 29. Plaintiff is also aware that the Court has discretion to reduce PAGA penalties. Pursuant
8 to Labor Code § 2699(f)(2), the Court can decline to award the full amount of PAGA penalties where
9 “if, based on the facts and circumstances of the particular case, to do otherwise, would result in an award
10 that is unjust, arbitrary and oppressive, or confiscatory.”

11 30. Here, the proposed settlement amount of \$355,000.00 amounts to approximately 7.78%
12 of the total possible liability in this matter.

13 31. I strongly believe that Plaintiff can prevail at trial. However, after taking into account
14 sharply disputed factual and legal issues involved in this litigation, the risks attending further
15 prosecution, including the still-developing law under PAGA, and the substantial benefits to be received
16 pursuant to the compromise and settlement of the litigation, I have concluded that settlement on the
17 terms set forth in the Settlement Agreement is appropriate and in the best interests of Plaintiff and the
18 Aggrieved Employees.

19 **ATTORNEY EXPERIENCE**

20 32. I am one of the primary attorneys on this matter. My qualifications are as follows: I
21 received my JD from Loyola Law School in 2017. I received the First Honors Award in Legal Research
22 and Writing, First Honors Award in Appellate Advocacy, and First Honors Award in Civil Litigation
23 Practicum I for achieving the highest grade in those classes. During law school, I was a Staff Editor for
24 Loyola Law Review. I was also an extern at the U.S. District Court, Central District of California, for
25 the Honorable Christina A. Snyder, and a certified law clerk at the San Diego County District Attorney’s
26 Office, Collaborative Courts Division, and the Los Angeles County District Attorney’s Office,
27 Consumer Protection and Environmental Crimes Division. In 2016, I participated in Loyola Law
28 School’s Scott Moot Court Competition, where I placed Top 16 and was awarded the Top Ten Brief

1 Award. In 2017, I participated in the Employment Rights Clinic, an extension of the Division of Labor
2 Standards Enforcement created to investigate retaliation complaints. Upon graduation from law school,
3 I was admitted to the California Bar in December 2017.

4 33. I am currently an associate at the law firm Diversity Law Group, P.C., an employment
5 law firm that has handled numerous wage and hour class and individual actions, on both plaintiff and
6 defense sides. The firm currently has cases in numerous state courts, including the Santa Clara Superior
7 Court, Los Angeles Superior Court, Orange County Superior Court, San Diego County Superior Court,
8 Monterey County Superior Court, as well as the United States District Courts for the Central, Northern,
9 Southern, and Eastern Districts of California.

10 34. I am currently handling and/or have handled numerous wage and hour class action and
11 PAGA lawsuits.

12 35. In 2018, I argued before the California Court of Appeal, Second Appellate District, in the
13 case of *Lee v. California Commerce Club, Inc.* (California Court of Appeal Case Number B276171,
14 LASC Case Number BC596924), and *Perez v. Standard Drywall, Inc.* (California Court of Appeal Case
15 Number A146819, Alameda Sup. Ct. No. RG15761142). In that same year, I also assisted the firm in
16 successfully obtaining class certification and partial summary judgment by the United States District
17 Court, Northern District of California in the case of *Magadia v. Wal-Mart Associates, Inc.* (Case
18 Number 17-CV-00062-LHK). I third chaired the bench trial in that same case in December 2018.

19 36. I have also been certified and/or approved as class counsel in numerous other wage/hour
20 class actions. Most recently, I was certified as class counsel in the cases *Garcia v. Wal-Mart Associates,*
21 *Inc., et al.* (S.D. Cal., Case Number 3:18-cv-00500-L-MDD), *Richert v. Samaritan, LLC, et al.* (Santa
22 Clara County Superior Court, Case Number 17CV314186), *Song v. THC – Orange County, Inc.* (C.D.
23 Cal., Case No. 8-17-cv-965-JLS (DFM)), *Hernandez v. Wells Fargo Bank National Ass’n, et al* (Santa
24 Clara County Superior Court, Case No. 16-CV-299319), and *Sims v. QG Printing II, LLC, et al.* (C.D.
25 Cal., Case No. ED CV 20-1632-DMG (KKx)), as part of the courts’ orders granting class certification
26 pursuant to Fed. R. Civ. P. 23 and California Code of Civil Procedure § 382.

27 37. Moreover, I was granted final approval as class counsel in *Lao v. H & M Hennes &*
28 *Mauritz, L.P.* (N.D. Cal., Case No. 5:16:cv-333 EJD), *Abarca v. El Estero Car Wash, Inc. et al*

(Monterey County Superior Court, Case No. 18CV003398), *Valles v. Community Hospital of the Monterey Peninsula* (Monterey County Superior Court, Case No. 17CV003452), *Hernandez v. Wells Fargo Bank National Ass’n, et al* (C.D. Cal., Case No. 16-CV-299319); *Baker v. California Forensic Medical Group, Inc., et al.*, Judicial Council Coordination Proceeding No. 4999 (Lead Case No. 17CV003723); *Mendez v. Falcon Trading Company* (Monterey County Superior Court, Case No. 19CV004512).

38. To date, I have incurred approximately 97.2 hours in connection with the litigation of this lawsuit. Attached hereto as **Exhibit E** is a chart summarizing the amount of work I have incurred to date on this matter.

39. In addition to the hours above, I also anticipate spending an additional 8 hours through the completion of this case to handle any post-approval matter and any settlement issues, including preparing for and attending the approval hearing, and correspondence/communications with the Settlement Administrator, defense counsel, and/or Aggrieved Employees regarding any potential issues related to the settlement.

40. The total lodestar for my hours will be approximately \$63,120.00 based on 105.2 total hours, at an hourly rate of \$600.00 per hour. In 2019 and 2020, I was approved at an hourly rate of \$450.00 per hour by various Courts in a number of matters, including but not limited to, *Lao v. H & M Hennes & Mauritz, L.P.* (N.D. Cal., Case No. 5:16:cv-333 EJD), *Hernandez v. Wells Fargo Bank National Ass’n, et al* (C.D. Cal., Case No. 16-CV-299319), and *Abarca v. El Estero Car Wash, Inc. et al* (Monterey County Superior Court Case No. 18CV003398). In 2021, I was approved at the hourly rate of \$500.00 in various cases, including *Baker v. California Forensic Medical Group, Inc., et al.*, Judicial Council Coordination Proceeding No. 4999 (Lead Case No. 17CV003723); *Mendez v. Falcon Trading Company* (Monterey County Superior Court Case No. 19CV004512); and *Truong v. DS Services of America, Inc.* (Solano County Superior Court Case No. FCS054399). As of January 1, 2023, my hourly rate increased to \$600.00 per hour. I was approved at the hourly rate of \$600.00 in *Moen v. Genentech, Inc.* (San Diego Superior Court Case No. 37-2021-00008619-CU-OE-CTL), *Murray v. Granite Wellness Centers et al.* (Nevada County Superior Court Case No. CU20-084680), *Cabalo v. Jones Lang LaSalle Americas, Inc.* (San Diego County Superior Court, Case No. 37-2020-00044322-CU-OE-CTL), *Osman-*

1 *Bravard v. Placer Title Company* (Nevada County Superior Court, Case No. CU21-085315), and *Ferrell*
2 *v. CoreSite, L.L.C.* (Santa Clara County Superior Court, Case No. 22CV396904).

3 **LITIGATION COSTS**

4 41. To date, my office has incurred actual litigation costs in the amount of \$16,817.23. The
5 costs are all litigation-related costs directly incurred in the prosecution of this action, including filing
6 and court fees, service of process fees, mediation fees, and postage. Attached hereto as **Exhibit F** is a
7 true and correct copy of costs my firm has incurred in connection with the prosecution of this lawsuit.
8 Plaintiff's counsel is only seeking reimbursement of actual litigation costs out of the \$30,000.00
9 allocation under the Settlement Agreement.

10 **NOTICE TO THE LWDA**

11 42. Concurrent with the filing of the Motion to Approve Settlement Agreement Pursuant to
12 PAGA, my office uploaded the Motion, Settlement Agreement, and proposed order to the LWDA's
13 website. Attached hereto as **Exhibit G** is a true and correct copy of the confirmation of submission to s

14 I declare under penalty of perjury under the laws of the State of California that the foregoing is
15 true and correct.

16 Executed on this 23rd day of January 2024, at Los Angeles, California.

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20 Mai Tulyathan
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EXHIBIT A

MATTHEW ONG
c/o DIVERSITY LAW GROUP, P.C.
515. S. Figueroa St., Suite 1250
LOS ANGELES, CALIFORNIA 90071
TELEPHONE (213) 488-6555
FACSIMILE (213) 488-6554

April 15, 2022

VIA ON-LINE FILING WITH LWDA AND CERTIFIED MAIL, RETURN RECEIPT
REQUESTED TO EMPLOYER

California Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov

Re: *Ong v. eHealthinsurance Services, Inc.*

To Whom It May Concern:

This correspondence shall constitute written notice under Labor Code section 2699.3 of the claims asserted on behalf of myself and all similarly aggrieved employees against my former employer, eHealthinsurance Services, Inc. (the "Company"). Specifically, I allege that the Company:

1. Violated Labor Code §§ 201-204, 226.7, 510, 558, 1194, 1197 and 1197.1 by not paying me and other similarly situated aggrieved employees minimum, regular, and overtime wages. Specifically, prior to the start of each shift and during our meal breaks, we were required to boot up our computers, log-in, use our cell phones to authenticate the log-in process, all of which were done off-the-clock. Further, as a result of such violations, the Company violated Labor Code §§ 201-203 by not paying the aggrieved employees all of their wages and meal break premiums upon separation of employment and violated Labor Code § 226(a) as the wage rates, total hours worked, and net/gross wages earned shown on the wage statements were inaccurate due to the violations set forth above.

2. Violated Labor Code §§ 226.7 and 512 by failing to pay me and other similarly situated aggrieved employees our meal and rest period premium pay at our regular rates of pay as required by these provisions. Labor Code § 226.7(c) states that "the employer shall pay the employee one additional hour of pay at the employee's **regular rate** of compensation for each workday that the meal or rest or recovery period is not provided." Throughout our employment with the Company, other non-exempt employees and I earned non-discretionary remuneration, including, but not limited to bonuses and incentives. As these items are non-discretionary forms of remuneration, they should have been included in the regular rate of pay for purposes of paying me and other employees our meal and rest period premium pay. However, whenever the Company paid me and other employees our meal and rest period premium pay during periods in which we earned this non-discretionary remuneration, the meal and rest period premium was always paid at our base rate of pay. Further as a result of such violations, the Company violated Labor Code §§ 201-203 by not paying employees all of their wages upon separation of employment due to the underpaid meal and rest break premiums and Labor Code § 226 by failing to accurately identifying the accurate rate of pay, and gross and net wages earned.

April 15, 2022

Page 2

3. Violated Labor Code §§ 201-204 and 246 by failing to pay all similarly situated aggrieved employees sick pay at the regular rate of pay as the Company failed to include non-discretionary remuneration, including, but not limited to bonuses and incentives, into the regular rate of pay for sick pay wages. Further, as a result of such violations, the Company violated Labor Code § 226 as the wage statements failed to accurately identify the accurate rates of pay and gross/net wages earned.

The address for the Company is:

eHealthinsurance Services, Inc.
2625 Augustine Drive
Second Floor
Santa Clara, CA 95054

Please contact my attorneys at the address/telephone number listed above if you have any questions regarding this matter.

Sincerely,

Matthew Ong

ID BZPpL9zTVb3HrgcLcms8s13c

Matthew Ong

cc: eHealthinsurance Services, Inc. (by certified mail)

Mariana Becerra

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Friday, April 29, 2022 3:54 PM
To: Mariana Becerra
Subject: Thank you for submission of your PAGA Case.

4/29/2022

LWDA Case No. LWDA-CM-881311-22
Law Firm : Diversity Law Group
Plaintiff Name : Matthew Ong
Employer: eHealthinsurance Services, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT B

**SETTLEMENT AGREEMENT OF CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT CLAIMS**

This Settlement Agreement of California Labor Code Private Attorneys General Act Claims (“Settlement Agreement” or “Agreement”) is made and entered into between Plaintiff Matthew Ong, acting in a private attorney general capacity, and Defendant eHealthInsurance Services, Inc.

I. DEFINITIONS

The following terms, when used in this Settlement Agreement, shall have the following meanings:

1. “**Action**” and “**PAGA Action**” mean the action entitled *Matthew Ong v. eHealthInsurance Services, Inc.*, Santa Clara County Superior Court Case No. 22CV399893.

2. “**Aggrieved Employees**” mean all current and former non-exempt employees of Defendant who worked in California at any time from April 29, 2021, through April 1, 2023. Defendant represents that the number of Aggrieved Employees during the PAGA Period is approximately 475 individuals.

3. “**Complaint**” means the representative action complaint filed by Plaintiff in this Action on July 5, 2022, based on a notice filed with the LWDA on April 29, 2022.

4. “**Court**” means the Superior Court of California for the County of Santa Clara.

5. “**Defendant**” means Defendant eHealthInsurance Services, Inc.

6. “**Effective Date**” means the date that the Court grants approval of this settlement.

7. “**Gross Settlement Amount**” is the exact sum of Three Hundred Fifty-Five Thousand Dollars (\$355,000.00), which represents the total amount payable under this Settlement Agreement by Defendant, including, but not limited to, attorneys’ fees, litigation costs, Plaintiff’s Service Award, PAGA penalties, and settlement administration costs.

8. “**Individual PAGA Payment(s)**” means 25% of the Net Settlement Amount to be paid to the Aggrieved Employees, in accordance with California Labor Code § 2699. The Individual PAGA Payments shall be distributed to the Aggrieved Employees as further described in Section IV herein.

9. “**LWDA**” means the California Labor and Workforce Development Agency.

10. “**LWDA Notice**” means the notice that Plaintiff submitted to the LWDA on April 29, 2022, asserting his claims under PAGA in support of his Complaint.

11. “**LWDA Payment**” means 75% of the Net Settlement Amount to be paid to the LWDA, in accordance with California Labor Code § 2699.

12. “**Net Settlement Amount**” means the Gross Settlement Amount minus the Court-approved Service Award to the Plaintiff, attorneys’ fees and litigation costs to Plaintiff’s Counsel, and settlement administration costs to the Settlement Administrator. Provided that the Court approves the amounts listed herein in full, the Net Settlement Amount is estimated to be approximately \$191,916.67. Pursuant to the PAGA, seventy-five percent of the Net Settlement Amount will be paid to the LWDA and twenty-five percent of the Net Settlement Amount will be paid to the Aggrieved Employees. The Net Settlement Amount may increase or decrease based on order of the Court regarding attorneys’ fees and litigation costs, settlement administration costs, and the Service Award to Plaintiff described below.

13. “**PAGA**” means the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.*

14. “**PAGA Period**” means the time period of April 29, 2021, through April 1, 2023.

15. “**Parties**” means Plaintiff and Defendant, collectively.

16. “**Plaintiff**” means Plaintiff Matthew Ong.

17. “**Plaintiff’s Counsel**” means Diversity Law Group, P.C. and Webber Law Group.

18. “**Released Parties**” means Defendant eHealthInsurance Services, Inc., its subsidiaries, parents, affiliated companies, joint employers (Duran HCP; DGN Technologies, Inc.; Insight Global, LLC; Creatis, Inc.; BGSF; and C9 Xperts Group), employees, directors, officers, agents, successors, or assigns.

19. “**Released PAGA Claims**” means all claims for civil penalties under the PAGA that were set forth, or could have been set forth based on the facts alleged in the Action, for penalties pursuant to PAGA for violation of Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, and 1197.1, that accrued during the PAGA Period.

20. “**Service Award**” means the amount of Ten Thousand Dollars (\$10,000.00), which shall be paid from the Gross Settlement Amount to Plaintiff for his services in prosecuting this Action on behalf of other employees. This amount shall be in addition to Plaintiff’s Individual PAGA Payment.

21. “**Settlement Administrator**” means Phoenix Settlement Administrators, the third-party administrator retained by the Parties to administer the settlement.

II. RECITALS

1. Plaintiff is a former non-exempt employee of Defendant in California.

2. On April 29, 2022, Plaintiff submitted a notice to the LWDA asserting his claims under PAGA premised on violations of Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, and 1197.1.

3. On June 3, 2022, Plaintiff filed a complaint against Defendant alleging individual and class action wage and hour claims, entitled *Matthew Ong v. eHealthInsurance Services, Inc.*, Santa Clara County Superior Court Case No. 22CV398881 (“Class Action”).

4. On July 5, 2022, Plaintiff filed this Action against Defendant, asserting PAGA claims.

5. The Parties met and conferred regarding the existence of the arbitration agreement with class action waiver previously entered into by Plaintiff and Defendant. The Parties agreed to participate in early mediation. On April 13, 2023, following the exchange of informal discovery, the Parties attended a full-day mediation before experienced wage-and-hour mediator Tripper Ortman, Esq. and were able to reach a resolution of the Action, after engaging in additional post-mediation negotiations with the assistance of Mr. Ortman and accepting a mediator’s proposal as to the PAGA claims in this Action.

6. As a result of this settlement, the Parties have agreed to fully and finally resolve the Released PAGA Claims as to Plaintiff and the Aggrieved Employees. In light of the class action waiver in the arbitration agreement, Plaintiff has agreed to dismissal of the claims alleged in the Class Action as further explained in Paragraph V.1.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Non-Admission and Denial of Liability.** Nothing in this Settlement Agreement shall be construed to be an admission by Plaintiff that his claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiff, the Aggrieved Employees, or any other person, or as to the accuracy of any fact or allegation against it. Defendant specifically disclaims any such liability or wrongdoing. The Parties have entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and risks.

2. **Gross Settlement Amount.** Defendant shall pay \$355,000.00 as the Gross Settlement Amount to fully resolve the claims in this Action in the entirety. The Gross Settlement Amount shall be all-in with no reversion. The Parties agree to the following allocations to be paid from the Gross Settlement Amount:

a. **Net Settlement Amount.** The Net Settlement Amount will be subject to Court approval consistent with California Labor Code § 2699. Assuming the Court approves the attorneys’ fees and costs, Service Award, and settlement administration costs as listed herein, the Net Settlement Amount is estimated to be \$191,916.67. Upon approval and pursuant to the PAGA, the Net Settlement Amount shall be allocated as follows:

- (1) 75% of the Net Settlement Amount will be paid to the LWDA, as required by California Labor Code § 2699. This portion of the Net Settlement Amount is estimated to be \$143,937.50.
- (2) 25% of the Net Settlement Amount will be distributed to the

Aggrieved Employees as further described in Section IV herein. This portion of the Net Settlement Amount is estimated to be \$47,979.17.

b. **Attorneys' Fees and Costs.** Up to one-third of the Gross Settlement Amount, or \$118,333.33, shall be paid to Plaintiff's Counsel for payment of attorney's fees, and up to \$30,000.00 shall be paid to Plaintiff's Counsel for reimbursement of litigation costs. Defendant shall not oppose Plaintiff's request for attorneys' fees and costs up to these amounts. Any portion of the attorneys' fees and costs not awarded by the Court to Plaintiff's Counsel will be added to the Net Settlement Amount. The Settlement Administrator will report this payment on an IRS Form 1099 issued to Plaintiff's Counsel, who will be responsible for paying any tax obligations arising from any Form 1099 payment.

c. **Settlement Administration Costs.** Settlement Administration Costs shall include the cost of the Settlement Administrator to administer the settlement in the amount of up to \$4,750.00. Any portion of the Settlement Administration Costs not awarded by the Court will be added to the Net Settlement Amount.

d. **Service Award to Plaintiff.** Up to \$10,000.00 shall be paid to Plaintiff in exchange for his service as the representative in this Action. Defendant shall not oppose this request. Any portion of the Service Award not approved by the Court will be added to the Net Settlement Amount. Plaintiff's Service Award payment will be reported on an IRS Form 1099 by the Settlement Administrator. Plaintiff will be responsible for paying all state and federal income tax obligations arising from any Form 1099 payment.

3. **Calculation of Gross Settlement Amount.** The Gross Settlement Amount is calculated with, and is premised on, a total of 12,500 pay periods worked by Aggrieved Employees during the PAGA Period. If the number of total pay periods worked by the Aggrieved Employees during the PAGA Period exceeds 12,500, then Defendant shall have the option of increasing the Gross Settlement Amount on a pro rata basis, based on the same pay period value for any additional pay periods over 12,500 to include additional pay periods, or limiting the end date of the PAGA Period so as to limit the pay periods to a maximum of 12,500.

4. **Tax Indemnification.** Plaintiff is solely responsible for the payment of, and therefore promises to pay, any and all taxes, penalties, or other costs that may be assessed against him based on the Service Award payment. Defendant shall not have a duty to defend or indemnify Plaintiff against any tax claim or assessment associated with the payments made to him under this Settlement Agreement. Plaintiff shall cooperate in the defense of any tax claims brought against Defendant associated with the payment of the Service Award and shall indemnify and hold Defendant harmless against any action taken against it in the event any taxing authority challenges the allocation or characterization of the Service Award and/or seeks payment of taxes, interest, penalties, or other assessments from Defendant in connection with any payments paid pursuant to this Settlement Agreement.

5. **Release by Plaintiff and Aggrieved Employees.** Upon the Effective Date and Defendant's funding of the Gross Settlement Amount, Plaintiff and Aggrieved Employees fully

and finally release the Released Parties from the Released PAGA Claims that accrued during the PAGA Period.

6. **Mutual Non-Disparagement.**

a. Neither Party shall make any statements about the other Party or its businesses which are defamatory or maliciously false. This includes public statements or any statements which the Party reasonably believes will become public, written statements, oral statements, electronic statements, or other conduct that could reasonably disparage Plaintiff's or Defendant's reputation.

b. Nothing in this paragraph shall preclude Plaintiff from responding truthfully to inquiries made in connection with any legal or governmental proceeding pursuant to subpoena or other legal process.

7. **Court Approval of the Settlement.** Following full execution of this Settlement Agreement and subject to Defendant's review and approval prior to filing, Plaintiff's Counsel shall prepare and file a motion to the Court for approval of this Agreement. In connection with the motion, Plaintiff's Counsel will present this Settlement Agreement to the Court and will request that the Court issue a Settlement Approval Order and Judgment. Defendant shall not unreasonably withhold its approval of the motion for approval of this Agreement. Pursuant to Labor Code § 2699(l), Plaintiff will provide a copy of this Settlement Agreement to the LWDA concurrently with the filing of the motion for approval of the settlement.

8. **Termination of Settlement Agreement.** In the event: (i) the Court does not enter an order approving this Agreement as provided herein, including dismissal of the class claims alleged in the Class Action without prejudice; (ii) the Effective Date does not occur; or (iii) the settlement set forth in this Agreement does not become final for any other reason, this Settlement Agreement shall be null and void and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement Agreement. The Parties shall proceed in all respects as if this Settlement Agreement has not been executed.

IV. ADMINISTRATION OF SETTLEMENT

1. The Settlement Administrator will administer the settlement, the costs of which are estimated to be up to \$4,750.00 and shall be paid from the Gross Settlement Amount.

2. **Funding of Gross Settlement Amount; Individual Settlement Payments to Aggrieved Employees:**

a. Within twenty-one (21) calendar days of the Effective Date and receipt of wire transfer instructions from the Settlement Administrator, whichever is later, Defendant will deposit the Gross Settlement Amount with the Settlement Administrator.

b. Concurrently with the deposit of the Gross Settlement Amount, Defendant will provide to the Settlement Administrator a list of the following information for each Aggrieved Employee: (1) full name; (2) last known mailing address and telephone number; (3) the number of

pay periods worked as a non-exempt employee in California during the PAGA Period; and (4) Social Security number. Before disbursing the Net Settlement Amount to the LWDA and Aggrieved Employees, the Settlement Administrator will send calculations (without personal identifying information) of the Individual PAGA Payments to counsel for approval.

c. Within ten (10) calendar days of receipt of the Gross Settlement Amount, the Settlement Administrator shall pay to Plaintiff the amount of the Court-approved Service Award.

d. Within ten (10) calendar days of receipt of the Gross Settlement Amount, the Settlement Administrator shall pay to Plaintiff's Counsel the amount of the Court-approved attorneys' fees and costs.

e. Within ten (10) calendar days of receipt of the Gross Settlement Amount, the Settlement Administrator shall issue a payment to itself for the Court-approved settlement administration costs in connection with the services performed with the Settlement.

f. After payment of attorneys' fees and costs, Plaintiff's Service Award, and Settlement Administration Costs, the Net Settlement Amount will be disbursed to the LWDA and Aggrieved Employees as follows:

- (1) Seventy-five percent (75%) of the Net Settlement Amount will be distributed to the LWDA.
- (2) The remaining twenty-five percent (25%) of the Net Settlement Amount will be allocated to Aggrieved Employees on a pro rata basis (i.e., the number of pay periods each Aggrieved Employee worked as a non-exempt employee in California during the PAGA Period divided by the aggregate total number of pay periods worked by all Aggrieved Employees as non-exempt employees in California during the PAGA Period).
- (3) Each Aggrieved Employee's share of the Individual PAGA Payment will be stated on the Notice of Settlement, attached to this Agreement as Exhibit A.

g. Within ten (10) days after receipt of the Gross Settlement Amount, the Settlement Administrator will issue each Aggrieved Employee a check for his or her Individual PAGA Payment, along with the Notice of Settlement attached to this Settlement Agreement as Exhibit A. Checks will remain negotiable for one hundred eighty (180) days. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address, or Social Security number of the Aggrieved Employee involved, and will then perform a single re-mailing. Settlement checks returned as undeliverable and settlement checks remaining uncashed for more than 180 days after issuance will be distributed to the following *cy pres* beneficiary, Legal Aid At Work, as directed by the Court or by the Parties.

3. The Individual PAGA Payments shall be allocated as 100% penalties and shall be reported using IRS Forms 1099. The appropriate 1099s will be filed with the relevant taxing authorities by the Settlement Administrator and issued to the Aggrieved Employees by the Settlement Administrator in accordance with the law.

4. The Settlement Administrator will provide an accounting and written declaration under oath to the Parties of the amounts paid out and the completion of the administration. The accounting and declaration are due to the Parties within 21 days after the settlement check cashing 180-day deadline.

V. MISCELLANEOUS PROVISIONS

1. **Dismissal of Class Action.** Within fourteen (14) calendar days after execution of this Agreement by the Parties, Plaintiff agrees to request dismissal of the Class Action, *Ong v. eHealthInsurance Services, Inc.*, Santa Clara County Superior Court Case No. 22CV398881, by submitting the following to the Court: (i) a declaration and stipulation to dismiss *without prejudice* the class claims and allegations asserted in the Class Action, pursuant to California Rule of Court 3.770; and (ii) a request to dismiss with prejudice Plaintiff's individual claims asserted therein. No consideration is being given for the dismissal of the individual or class claims in the Class Action. Rather, those dismissals are based on the class action waiver present in the arbitration agreement previously entered into by Plaintiff and Defendant.

2. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel and reviewed in full.

3. **Drafting.** The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that no Party shall be considered the "drafter" of this Settlement Agreement for purposes of having terms construed against that Party.

4. **Acknowledgement of Fair and Reasonable Settlement.** The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this settlement.

5. **Costs and Fees.** The Parties shall each bear their own costs, attorneys' fees, mediator fees, and other fees incurred in connection with this Settlement Agreement and in connection with the Action, except as otherwise set forth specifically herein.

6. **Authority; Binding Agreement.** Defendant represents and warrants that the undersigned has the authority to act on behalf of Defendant and to bind Defendant to the terms of this Settlement Agreement. Plaintiff represents and warrants that he has the capacity to act on his own behalf and on behalf of all who might claim through him to bind him to the terms and conditions of this Settlement Agreement. The Parties agree that this Settlement Agreement is

enforceable and binding on all Parties, and further agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms under California Code of Civil Procedure § 664.6. In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover their or its attorneys' fees and costs in connection with the enforcement action.

7. **Successors and Assigns.** The provisions of this Settlement Agreement shall be binding upon and inure to the benefit of the respective Parties and their heirs, executors, administrators, agents, representatives, successors, and assigns.

8. **Governing Law.** This Settlement Agreement shall be construed under and governed by the laws of the State of California. This Settlement Agreement shall be deemed to have been entered into in Santa Clara County, California and all questions of validity, interpretation, or performance of any of its terms or of any rights or obligations of the Parties to this Settlement Agreement shall be governed by California law. If any legal or equitable action or arbitration is necessary to enforce the terms of this Settlement Agreement, it shall be brought in the State of California, County of Santa Clara.

9. **Continuing Jurisdiction and California Code of Civil Procedure § 664.6.** After approval of this settlement, and pursuant to Code of Civil Procedure § 664.6, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the settlement, (ii) settlement administration matters, and (iii) such other matters as may be appropriate under court rules or as set forth in this settlement.

10. **Execution and Counterparts.** This Settlement Agreement is subject only to the execution of all Parties. The Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including facsimile, digital, electronic, .PDF, DocuSign, and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

11. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

12. **Amendment or Modification.** This Settlement Agreement may be amended or modified only by a written instrument, signed by counsel for all Parties.

13. **Invalidity of Any Provision.** Before declaring any provision of this Settlement 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 Settlement Agreement valid and enforceable.

14. **Waiver.** No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right, or remedy.

IN WITNESS THEREOF, the Parties each acknowledge that he/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement and hereby executes it voluntarily and with full understanding of its consequences.

PLAINTIFF:

Dated: 1/15/2024


ID uxBxHGmoZVRzPFdKU9gXVH6d

Matthew Ong

DEFENDANT:

Dated: _____

By: _____

Galvin G. Galimi
SVP, General Counsel
eHealthInsurance Services, Inc.

APPROVED AS TO FORM:

DATED: January 16, 2024

LITTLER MENDELSON, P.C.


By: _____
Britney N. Torres
Attorneys for Defendant eHealthInsurance
Services, Inc.

DATED: January 16, 2024

DIVERSITY LAW GROUP, P.C.


By: _____
Larry W. Lee
Mai Tulyathan
Attorneys for Plaintiff Matthew Ong and
Aggrieved Employees

IN WITNESS THEREOF, the Parties each acknowledge that he/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement and hereby executes it voluntarily and with full understanding of its consequences.

PLAINTIFF:

Dated: _____

Matthew Ong

DEFENDANT:

Dated: Jan 17, 2024

By: _____

Galvin G. Galimi
SVP, General Counsel
eHealthInsurance Services, Inc.

APPROVED AS TO FORM:

DATED: _____

LITTLER MENDELSON, P.C.

By: _____

Britney N. Torres
Attorneys for Defendant eHealthInsurance
Services, Inc.

DATED: _____

DIVERSITY LAW GROUP, P.C.

By: _____

Larry W. Lee
Mai Tulyathan
Attorneys for Plaintiff Matthew Ong and
Aggrieved Employees

EXHIBIT A

NOTICE OF SETTLEMENT

Ong v. eHealthInsurance Services, Inc.
(Santa Clara County Superior Court, Case No. 22CV399893)

[Address Line 1]
[Address Line 2]
[Address Line 3]

[Dear [redacted]]:

You are receiving this letter and the accompanying check made payable to you pursuant to a court-approved settlement in the matter of *Ong v. eHealthInsurance Services, Inc.* The check is in the amount of \$ [redacted] and is for your share of the settlement pursuant to the settlement agreement entered into by the Parties in the above-referenced lawsuit.

You have been identified as a California, non-exempt employee of eHealthInsurance Services, Inc. (“Defendant”) who worked during one or more pay periods from April 29, 2021, through April 1, 2023 (“Aggrieved Employee”).

On July 5, 2022, Matthew Ong (“Plaintiff”) filed a lawsuit against Defendant in the above-referenced matter (“Action”). The Action was brought by Plaintiff, on behalf of himself and the state of California and other Aggrieved Employees, as an action pursuant to California Labor Code Private Attorneys General Act (“PAGA”), based on violations of California Labor Code sections 201-204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, and 1197.1 (“PAGA Claims”). For these alleged violations, Plaintiff sought civil penalties pursuant to the PAGA.

Defendant denies Plaintiff’s allegations and disputes all of Plaintiff’s claims. The Action was litigated and following an investigation and a mediation with a third-party mediator, to avoid further time and expense in litigation, Defendant and Plaintiff agreed to settle the case. The Parties reached a settlement which takes into account the uncertainties and risks of proceeding with litigation.

The Court approved the settlement on [DATE OF APPROVAL], 2024. The payment which accompanies this notice is made to you pursuant to the terms of the Settlement Agreement. You may not opt out of or object to the settlement. The settlement check shall remain valid for 180 days. Checks remaining un-cashed for more than 180 days after issuance will be tendered to Legal Aid At Work.

By operation of the court-approved settlement, the Aggrieved Employees are deemed to have fully released and discharged Defendant and its subsidiaries, parents, affiliated companies, joint employers (Duran HCP; DGN Technologies, Inc.; Insight Global, LLC; Creatis, Inc.; BGSF; and C9 Xperts Group), employees, directors, officers, agents, successors, or assigns from all claims for civil penalties under the PAGA that were set forth, or could have been set forth based on the facts alleged in the Action, for penalties pursuant to PAGA for violation of Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, and 1197.1, that accrued from April 29, 2021, through April 1, 2023 (the “PAGA Period”), regardless of whether you cash the enclosed check.

If you have any questions regarding this notice or this case, please contact the Settlement Administrator:

Phoenix Settlement Administrators

[ADDRESS TBD]

[ADDRESS TBD]

[Email address TBD]

[Phone TBD]

PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE

EXHIBIT C

EXHIBIT A

NOTICE OF SETTLEMENT

Ong v. eHealthInsurance Services, Inc.
(Santa Clara County Superior Court, Case No. 22CV399893)

[Address Line 1]
[Address Line 2]
[Address Line 3]

[Dear [REDACTED]]:

You are receiving this letter and the accompanying check made payable to you pursuant to a court-approved settlement in the matter of *Ong v. eHealthInsurance Services, Inc.* The check is in the amount of \$ [REDACTED] and is for your share of the settlement pursuant to the settlement agreement entered into by the Parties in the above-referenced lawsuit.

You have been identified as a California, non-exempt employee of eHealthInsurance Services, Inc. (“Defendant”) who worked during one or more pay periods from April 29, 2021, through April 1, 2023 (“Aggrieved Employee”).

On July 5, 2022, Matthew Ong (“Plaintiff”) filed a lawsuit against Defendant in the above-referenced matter (“Action”). The Action was brought by Plaintiff, on behalf of himself and the state of California and other Aggrieved Employees, as an action pursuant to California Labor Code Private Attorneys General Act (“PAGA”), based on violations of California Labor Code sections 201-204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, and 1197.1 (“PAGA Claims”). For these alleged violations, Plaintiff sought civil penalties pursuant to the PAGA.

Defendant denies Plaintiff’s allegations and disputes all of Plaintiff’s claims. The Action was litigated and following an investigation and a mediation with a third-party mediator, to avoid further time and expense in litigation, Defendant and Plaintiff agreed to settle the case. The Parties reached a settlement which takes into account the uncertainties and risks of proceeding with litigation.

The Court approved the settlement on [DATE OF APPROVAL], 2024. The payment which accompanies this notice is made to you pursuant to the terms of the Settlement Agreement. You may not opt out of or object to the settlement. The settlement check shall remain valid for 180 days. Checks remaining un-cashed for more than 180 days after issuance will be tendered to Legal Aid At Work.

By operation of the court-approved settlement, the Aggrieved Employees are deemed to have fully released and discharged Defendant and its subsidiaries, parents, affiliated companies, joint employers (Duran HCP; DGN Technologies, Inc.; Insight Global, LLC; Creatis, Inc.; BGSF; and C9 Xperts Group), employees, directors, officers, agents, successors, or assigns from all claims for civil penalties under the PAGA that were set forth, or could have been set forth based on the facts alleged in the Action, for penalties pursuant to PAGA for violation of Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, and 1197.1, that accrued from April 29, 2021, through April 1, 2023 (the “PAGA Period”), regardless of whether you cash the enclosed check.

If you have any questions regarding this notice or this case, please contact the Settlement Administrator:

Phoenix Settlement Administrators

[ADDRESS TBD]

[ADDRESS TBD]

[Email address TBD]

[Phone TBD]

PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE

EXHIBIT D



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

CASE ASSUMPTIONS

Class Members	475
Opt Out Rate	N/A
Opt Outs Received	
Total Class Claimants	475
Subtotal Admin Only	\$4,750.00

Not-to-Exceed Total \$4,750.00

For 475 Class Members

Pricing Good for Scope of Estimate Only

October 16, 2023

Case: Ong v. eHealthInsurance PAGA Administration

Phoenix Contact: Jodey Lawrence

Contact Number: 949-566-1455

Email: Jodey@phoenixclassaction.com

Requesting Attorney: Mai Tulyathan

Firm: Diversity Law Group, APC

Contact Number: (213) 488-6555

Email: ktulyathan@diversitylaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly. Estimate is based on 475 Class Members. Class data Must be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 days.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$100.00	2	\$200.00
Programming Database & Setup	\$100.00	2	\$200.00
Toll Free Setup*	\$45.27	1	\$45.27
Call Center & Long Distance	\$2.00	48	\$95.00
NCOA (USPS)	\$50.00	1	\$50.00
		Total	\$590.27

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Check & Postage

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$75.00	2	\$150.00
Data Merge & Duplication Scrub	\$0.25	475	\$118.75
Notice and Check Packet	\$1.50	475	\$712.50
Estimated Postage (up to 1 oz.)*	\$0.64	475	\$304.00
		Total	\$1,285.25

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$50.00	2	\$100.00
Skip Tracing Undeliverables	\$1.50	48	\$71.25
Remail Notice Packets	\$1.50	48	\$71.25
Estimated Postage	\$0.56	48	\$26.60
Programming Undeliverables	\$50.00	1	\$50.00
Total			\$319.10

Database Programming

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Claims Database	\$100.00	2	\$200.00
Case Manager	\$85.00	2	\$170.00
Total			\$370.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$100.00	2	\$200.00
Disbursement Review	\$100.00	2	\$200.00
Programming Manager	\$95.00	2	\$190.00
QSF Bank Account & EIN	\$50.00	2	\$100.00
Check Run Setup & Printing	\$100.00	2	\$200.00
Total			\$890.00

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$100.00	2	\$200.00
Remail Undeliverable Checks (Postage Included)	\$1.50	90	\$135.38
Reconcile Uncashed Checks	\$85.00	2	\$170.00
Conclusion Reports	\$100.00	2	\$200.00
Case Manager Conclusion	\$90.00	1	\$90.00
Final Reporting & Declarations	\$100.00	1	\$100.00
QSF Annual Tax Reporting * (State Tax Reporting Included)	\$250.00	1	\$250.00
Check to Cy-Pres	\$150.00	1	Included
Uncashed Checks to the State of California Controllers Office Estimated <u>7</u> Total Class Members	\$150.00	1	\$150.00
Total			\$1,295.38

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$4,750.00



TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT E

Matthew Ong v. eHealthInsurance Services, Inc.
Time and Task Chart for Mai Tulyathan

Hours	Description of Work
7.6	Factual investigation; review of file and client documents; confer with co-counsel regarding theories of liability upon assignment to case
2.7	Draft PAGA letter; confer with client regarding same
4.2	Draft complaints; further review and revise complaints; confer with client and co-counsel regarding same
0.3	Research related cases
1.0	Draft peremptory challenge
0.5	Review order and notice of reassignment; order deeming case complex and staying discovery
0.1	Review Defendant's notice of appearance
0.2	Meet and confer with opposing counsel re: service
0.1	Prepare notice of order deeming case complex
3.6	Meet and confer with opposing counsel for case management conferences; draft various case management conference statements
3.9	Review Defendant's correspondence regarding arbitrability; research in connection with same; confer with client regarding same
2.5	Further meet and confer with opposing counsel and co-counsel regarding arbitration agreement and early mediation (several telephonic and e-mail correspondence)
0.3	Meet and confer with opposing counsel regarding informal data for mediation
9.4	Review data and documents produced by Defendant for mediation and settlement purposes, including sample payroll records; run exposure analysis
0.5	Pre-mediation communications with mediator
6.3	Draft mediation brief; conduct research in connection with same; review and revise same; confer with co-counsel regarding brief
10.5	Prepare for and attend mediation
0.5	Review mediator's proposal; confer with client and co-counsel regarding same
3.8	Multiple post-mediation discussions with mediator (telephonic and e-mail correspondence)
0.2	Telephonic conference with opposing counsel
5.3	Draft MOU

2.7	Confer with opposing counsel and co-counsel regarding MOU; further revise MOU
8.4	Draft long-form settlement agreement and PAGA notice to employees
5.7	Several meet and confer correspondences with opposing counsel regarding settlement terms and settlement agreement; review and revise same
0.7	Further review and revise PAGA notice to employees
1.0	Confer with settlement administrator regarding administration and admin expenses; review bid
14.6	Draft motion for approval of PAGA settlement, proposed order, and supporting declarations; further review and revise same
0.6	Meet and confer with opposing counsel regarding PAGA approval motion
<u>97.2</u>	<u>TOTAL HOURS</u>

EXHIBIT F

1/8/2024
5:05 PM

DIVERSITY LAW GROUP
Slip Listing

Page 1

Selection Criteria

Slip.Classification Open
Client (hand select) Include: Ong, Matthew v. eHealth
Slip.Transaction Ty 2 - 2

Rate Info - identifies rate source and level

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
71612	EXP	Mariana Becerra	1	75.00	75.00
4/29/2022		Court fees			
WIP		Ong, Matthew v. eHealth			
LWDA					
71981	EXP	Olympia	2	0.25	0.50
4/30/2022		Photocopies			
WIP		Ong, Matthew v. eHealth			
Photocopies					
71982	EXP	Olympia	1	6.13	6.13
4/30/2022		Postage			
WIP		Ong, Matthew v. eHealth			
Postage					
72025	EXP	Erika Mejia	1	1483.77	1483.77
6/3/2022		Court fees			
WIP		Ong, Matthew v. eHealth			
Odyssey - Complaint					
72391	EXP	Erika Mejia	1	96.85	96.85
6/13/2022		Atty Service			
WIP		Ong, Matthew v. eHealth			
Attorney Service - Complaint Service					
72211	EXP	Erika Mejia	1	5.72	5.72
6/16/2022		Court fees			
WIP		Ong, Matthew v. eHealth			
Odyssey - POS of Summons					
72337	EXP	Erika Mejia	1	1483.77	1483.77
7/5/2022		Court fees			
WIP		Ong, Matthew v. eHealth			
Odyssey - Complaint					
72355	EXP	Erika Mejia	1	5.72	5.72
7/7/2022		Court fees			
WIP		Ong, Matthew v. eHealth			
Odyssey - 170.6					

1/8/2024
5:05 PM

DIVERSITY LAW GROUP
Slip Listing

Page 2

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
72662	EXP	Erika Mejia	1	96.85	96.85
7/18/2022		Atty Service			
WIP		Ong, Matthew v. eHealth			
Attorney Service - Complaint Service					
72578	EXP	Erika Mejia	1	5.72	5.72
7/26/2022		Court fees			
WIP		Ong, Matthew v. eHealth			
Odyssey - POS of Summons					
73125	EXP	Erika Mejia	1	5.72	5.72
9/28/2022		Court fees			
WIP		Ong, Matthew v. eHealth			
Odyssey - Joint CMS					
73174	EXP	Erika Mejia	1	5.72	5.72
10/5/2022		Court fees			
WIP		Ong, Matthew v. eHealth			
Odyssey - Notice of Related Case					
73176	EXP	Erika Mejia	1	5.72	5.72
10/5/2022		Court fees			
WIP		Ong, Matthew v. eHealth			
Odyssey - Notice of Related Case					
73236	EXP	Olympia	1	5.72	5.72
10/7/2022		Court fees			
WIP		Ong, Matthew v. eHealth			
Odyssey - Joint CMS					
74191	EXP	Olympia	1	13000.00	13000.00
1/17/2023		Arbitrators			
WIP		Ong, Matthew v. eHealth			
Ortman Mediation					
75186	EXP	Erika Mejia	1	5.72	5.72
5/19/2023		Court fees			
WIP		Ong, Matthew v. eHealth			
Odyssey - Joint CMS					
75187	EXP	Erika Mejia	1	5.72	5.72
5/19/2023		Court fees			
WIP		Ong, Matthew v. eHealth			
Odyssey - Joint CMS					
75684	EXP	Erika Mejia	1	5.72	5.72
7/14/2023		Court fees			
WIP		Ong, Matthew v. eHealth			
Odyssey - Joint CMS					

1/8/2024
5:05 PM

DIVERSITY LAW GROUP
Slip Listing

Page 3

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
75685	EXP	Erika Mejia	1	5.72	5.72
7/14/2023		Court fees			
WIP		Ong, Matthew v. eHealth			
Odyssey - Joint CMS					
76178	EXP	Erika Mejia	1	5.72	5.72
9/14/2023		Court fees			
WIP		Ong, Matthew v. eHealth			
Odyssey - Joint CMS					
76179	EXP	Erika Mejia	1	5.72	5.72
9/14/2023		Court fees			
WIP		Ong, Matthew v. eHealth			
Odyssey - Joint CMS					
77116	EXP	Mai Tulyathan	1	500.00	500.00
1/8/2024		Court fees			
WIP		Ong, Matthew v. eHealth			
Settlement Approval filing					
Grand Total					
			Billable	0.00	16817.23
			Unbillable	0.00	0.00
			Total	0.00	16817.23

EXHIBIT G