

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

MATTHEW ONG, as an individual and on behalf of aggrieved employees,	)	Case No.: 22CV399893
	)	
Plaintiff,	)	ORDER GRANTING PLAINTIFF’S
	)	MOTION FOR APPROVAL PAGA
v.	)	SETTLEMENT
	)	
	)	Dept. 7
EHEALTHINSURANCE SERVICES, INC.,	)	
et al.,	)	
	)	
Defendants.	)	

This is a representative action under the Private Attorneys General Act (“PAGA”). Plaintiff Matthew Ong alleges that Defendant eHeathInsurance Services, Inc. (“Defendant”) committed various wage and hour violations and seeks penalties under PAGA for these violations.

Before the Court is Plaintiff’s motion for approval of PAGA settlement, which is unopposed. As discussed below, the Court GRANTS Plaintiff’s motion.

I. BACKGROUND

According to the allegations of the operative Complaint, Plaintiff was employed by Defendant as a non-exempt employee from July 2021 to April 4, 2022. He alleges that

1 Defendant failed to: pay all minimum, regular, and overtime wages, and meal period premiums
2 owed in violation of Labor Code sections 201-204, 226.7, 510, 558, 1194, 1197, and 1197.1;
3 pay employee meal period premium wages at the correct regular rate of pay that included all
4 non-discretionary remuneration, in violation of Labor Code sections 201-203, 226.7, and 512;
5 pay employee rest period premium wages at the correct regular rate of pay that included all
6 nondiscretionary remuneration, in violation of Labor Code sections 201-203 and 226.7; pay
7 employee sick pay at the correct regular rate of pay, in violation of Labor Code sections 201-204
8 and 246; and provide accurate itemized wage statements in violation of Labor Code section 226.

9 Plaintiff initiated this action with the filing of the Complaint on July 5, 2022, asserting a
10 single cause of action for penalties under PAGA based on the aforementioned Labor Code
11 violations.

12 **II. LEGAL STANDARD FOR APPROVING PAGA SETTLEMENT**

13 Under PAGA, an aggrieved employee may bring a civil action personally and on behalf
14 of other current or former employees to recover civil penalties for Labor Code violations.
15 (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other
16 grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639.) 75 percent of any
17 penalties recovered go to the Labor and Workforce Development Agency (LWDA), leaving the
18 remaining 25 percent for the employees. (*Ibid.*) PAGA is intended “to augment the limited
19 enforcement capability of [LWDA] by empowering employees to enforce the Labor Code as
20 representatives of the Agency.” (*Id.* at p. 383.) A judgment in a PAGA action binds all those,
21 including nonparty aggrieved employees, who would be bound by a judgment in an action
22 brought by the government. (*Id.* at p. 381.)

23 Labor Code section 2699, subdivision (1)(2) provides that “[t]he superior court shall
24 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s
25 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*

1 Court (2017) 3 Cal.5th 531, 549.) “[C]lass certification is not required” in this context as in a
2 class action. (*Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F. Supp. 3d 959, 971
3 (*Haralson*).)

4 Similar to its review of class action settlements, the Court must “determine
5 independently whether a PAGA settlement is fair and reasonable,” to protect “the interests of the
6 public and the LWDA in the enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.*
7 (2021) 72 Cal.App.5th 56, 76–77 (*Moniz*).) It must make this assessment “in view of PAGA’s
8 purposes to remediate present labor law violations, deter future ones, and to maximize
9 enforcement of state labor laws.” (*Id.* at p. 77; see also *Haralson, supra*, 383 F. Supp. 3d at
10 p. 971 [“when a PAGA claim is settled, the relief provided for under the PAGA [should] be
11 genuine and meaningful, consistent with the underlying purpose of the statute to benefit the
12 public”], quoting LWDA guidance discussed in *O’Connor v. Uber Technologies, Inc.* (N.D.
13 Cal. 2016) 201 F.Supp.3d 1110 (*O’Connor*).)

14 The settlement must be reasonable in light of the potential verdict value. (See *O’Connor*,
15 *supra*, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential
16 verdict].) But a permissible settlement may be substantially discounted, given that courts often
17 exercise their discretion to award PAGA penalties below the statutory maximum even where a
18 claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-
19 CV-02198-EMC) 2016 WL 5907869, at *8–9.)

20 **III. PLAINTIFF’S INVESTIGATION, SETTLEMENT PROCESS, AND THE** 21 **PARTIES’ AGREEMENT**

22 After the initiation of this action, Defendant advised Plaintiff of the existence of an
23 arbitration agreement, and the parties met and conferred to discuss participating in early
24 mediation. The parties subsequently agreed to participate in private mediation with wage and
25 hour mediator Francis J. Ortman III. In connection with mediation, the parties engaged in

1 informal discovery, with Defendant providing information pertaining to aggrieved employees
2 during the PAGA period, the number of pay periods at issue, Plaintiff's personnel file and wage
3 statements, a sample of payroll records of the PAGA group, as well as production of pertinent
4 policies. The materials provided enabled Plaintiff's counsel to analyze Defendant's liability and
5 exposure in preparation for the mediation.

6 On April 13, 2023, the parties participated in a mediation session with Mr. Ortman.
7 While they did not reach a settlement at the mediation, they continued extended settlement
8 negotiations afterwards, facilitated by Mr. Ortman, and ultimately reached the settlement
9 agreement that is now before the Court.

10 Pursuant to the parties' agreement, Defendant will pay a non-reversionary gross
11 settlement amount of \$355,000, which is comprised of up to \$118,333.33 in attorney's fees (one-
12 third of the gross settlement amount), up to \$30,000 in litigation costs and administration costs
13 not to exceed \$4,750. The net settlement of approximately \$205,099.44 will be distributed 75%
14 (\$153,824.58) to the LWDA and 25% (\$51,274.86) to "Aggrieved Employees" on a pro rata
15 basis based on the number of pay periods worked by each employee during the relevant period.
16 "Aggrieved Employees" are defined as "all current and former non-exempt employees of
17 Defendant who worked in California at any time from April 29, 2021, through April 1, 2023."
18 Defendant represents that there are approximately 475 "Aggrieved Employees"; based on this
19 number, the average recovery by each Aggrieved Employee is estimated to be \$107.95.¹
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21
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23 ¹ The gross settlement is premised on a total of 12,500 pay periods worked by Aggrieved
24 Employees during the PAGA Period. Pursuant to the parties' agreement, if the number of total
25 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.

1 In exchange for settlement, Aggrieved Employees will release Defendant from all claims
2 for civil penalties under the PAGA that were set forth, or could have been set forth based on the
3 facts alleged in the Action, for penalties pursuant to PAGA for violation of Labor Code sections
4 201-204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, and 1197.1, that accrued during the PAGA
5 Period.

6 The release is appropriately tailored to the allegations at issue, and does not release any
7 claims other than those for PAGA penalties. (See *Amaro v. Anaheim Arena Management,*
8 *LLC* (2021) 69 Cal.App.5th 521, 537; *Moniz, supra*, 72 Cal.App.5th at p. 82 [release of “all
9 known and unknown claims under PAGA ... that were or could have been pled based on the
10 allegations of the Complaint” was appropriately approved].) Nor does it affect a waiver of
11 claims by Aggrieved Employees against the released parties for any individual wage and hour
12 claims.

13 **IV. DISCUSSION**

14 **A. Potential Verdict Value**

15 Based on the data provided by Defendant, Plaintiff’s counsel estimated the maximum
16 exposure of the PAGA claim thusly: \$1,250,000 (off-the-clock violations); \$163,900 (meal and
17 rest period premiums); \$25,900 (sick pay rate violations); and \$3,125,000 (derivative wage
18 statement violations). Several factors reduced these amounts, including but not limited to the
19 following: the potential that the Court would award less penalties based on the employer lacking
20 knowledge of any violations; the lack of willfulness on the part of Defendant; the risk that
21 Plaintiffs may recover nothing; and Defendant’s denial on the merits and related defenses. In
22 consideration of these facts, the history of various similar PAGA decisions that significantly
23 reduce maximum penalties amounts (e.g., 90% reduction) and the risk that Plaintiff may recover
24 nothing, the Court finds that the proposed settlement is fair to those affected and is genuine,
25 meaningful, and reasonable in light of the statute’s purposes.

1 **B. Attorney's Fees**

2 While the PAGA statute does not expressly require judicial review of claimed attorney
3 fees, the Court believes it cannot adequately fulfill its statutory duty to review the penalties
4 associated with PAGA settlements without also considering attorney fees. The Court thus finds
5 that it must scrutinize the attorney fee arrangement associated with a PAGA settlement. This is
6 consistent with the observation of many courts that PAGA claims are analogous to “*qui tam*”
7 suits like those under the federal False Claims Act: when reviewing settlements of *qui tam*
8 claims, courts should and do consider any associated attorney fee arrangement. (See *U.S. v.*
9 *Texas Instruments Corp.* (9th Cir. 1994) 25 F.3d 725, 728 [attorney fee award must be
10 considered by the trial court as part of its review of the “entire settlement arrangement”].)

11 As set forth above, Plaintiff seeks a fee award of \$118,333.33, or one-third of the gross
12 settlement, which is not an uncommon contingency fee allocation in a wage and hour/PAGA
13 action. Plaintiff’s counsel also submit a lodestar figure of \$97,410, based on 145.2 hours spent
14 on this case by counsel billing at rates of \$600 to \$750 per hour. This results in a modest
15 multiplier of 1.2, which is well within the range of multipliers typically approved by courts in
16 these types of actions. Accordingly, the lodestar cross check supports the percentage fee actually
17 requested and this amount is approved. (See *Laffitte v. Robert Half Intern. Inc.* (Cal. 2016) 1
18 Cal.5th 480, 488, 503-504 [trial court did not abuse its discretion in approving fee award of 1/3
19 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13].)

20 **C. Other Costs and Awards**

21 Counsel’s request for litigation costs of \$16,817.23 appears reasonable based on the
22 supporting declarations provided which establish that counsel actually incurred costs in this
23 amount and is approved. The Court also approves settlement costs of \$4,750. Plaintiff requests
24 a service award in the amount of \$10,000 for the time and effort expended in bringing this
25

1 action, which Defendant does not oppose. The request is supported by a declaration submitted
2 by Mr. Ong and is approved.

3 **V. ADMINISTRATION PROCESS**

4 The parties have selected Phoenix Settlement Administrators (“Phoenix”) as the
5 administrator of the settlement. The parties have agreed that no later than 21 days following the
6 date of approval of this settlement, Defendant will provide Phoenix with a list of all Aggrieved
7 Employees with the relevant identifying information (including the last known home address)
8 and the number of pay periods worked. Within 10 days following receipt of the gross settlement
9 amount from Defendant (the deposit is required to take place no later than 21 days following the
10 date of approval), Phoenix will pay the various amounts approved by the Court to Plaintiff’s
11 counsel, the LWDA, and each Aggrieved Employee. Each Aggrieved Employee will be sent a
12 check in the appropriate amount. Any checks returned as non-deliverable will promptly be re-
13 mailed to the forwarding address provided; if none is, Phoenix will attempt to locate one using a
14 skip trace or other search method. Any checks returned as undeliverable or that remain uncashed
15 after 180 days will be transmitted to *cy pres* beneficiary Legal Aid at Work. These
16 administrative procedures are appropriate and are approved.

17 **VI. ORDER AND JUDGMENT**

18 Plaintiff’s motion for approval of the parties’ PAGA settlement is GRANTED.
19 “Aggrieved Employees” are “[a]ll current and former non-exempt employees of Defendant who
20 worked in California at any time from April 29, 2021, through April 1, 2023.”

21 Judgment shall be entered through the filing of this order and judgment. (Code Civ.
22 Proc., § 668.5.) Plaintiff and Aggrieved Employees shall take from the PAGA claim in their
23 Complaint only the relief set forth in the parties’ settlement agreement and this order and
24 judgment. The Court retains jurisdiction over the parties to enforce the terms of the PAGA
25 settlement agreement and the final order and judgment.

1 The Court sets a compliance hearing for March 20, 2025 at 2:30 P.M. in Department 7.
2 At least ten court days before the hearing, Plaintiff's counsel and the settlement administrator
3 shall submit a summary accounting of the net settlement fund identifying distributions made as
4 ordered herein; the number and value of any uncashed checks; amounts remitted to the *cy pres*
5 beneficiary; the status of any unresolved issues; and any other matters appropriate to bring to the
6 Court's attention. Counsel may appear at the compliance hearing remotely.

7
8 DATED: July 24, 2024


CHARLES F. ADAMS
Judge of the Superior Court