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8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF SANTA CLARA**

10 WILLIAM TRUCHINSKI,

11  
12 Plaintiff,

13 v.

14 HOLOGIC, INC., et al.,

15 Defendants.  
16

Case No.: 22CV397278

**ORDER CONCERNING PLAINTIFF’S  
MOTION FOR PAGA SETTLEMENT  
APPROVAL**

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18 This is a representative Private Attorneys General Act (“PAGA”) action alleging wage  
19 and hour violations by Defendant Hologic, Inc. Plaintiff William Truchinski alleges that  
20 Defendant failed to properly calculate the “regular rate of pay” for various purposes, failed to  
21 provide meal and rest periods, and committed other wage and hour violations.

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

24 **I. BACKGROUND**

25 As alleged in the operative complaint, Defendant is a manufacturer of medical imaging  
26 machines, chiefly mammography machines, and provides maintenance and repair services  
27 related to its machines throughout the U.S.A. and California. (Second Amended PAGA  
28 Representative Action Complaint (“SAC”), ¶ 11.) Plaintiff was a non-exempt employee at

1 Defendant's Santa Clara location, and began working as a Field Service Engineer on April 12,  
2 2021, until his separation from employment on February 18, 2022. (*Id.*, ¶ 12.)

3 Plaintiff alleges that Defendant had a consistent practice/policy of unevenly  
4 rounding/shaving employees' time entries to their scheduled shifts, rather than the actual hours  
5 worked, resulting in pre- and post-shift off-the-clock work. (SAC, ¶ 14.) Defendant underpaid  
6 overtime because it failed to include incentive pay, non-discretionary bonuses, and other forms  
7 of remuneration when calculating the "regular rate of pay." (*Id.*, ¶ 17.) In addition, Plaintiff and  
8 other employees were paid on a "weekly, biweekly, or semimonthly" payroll, but Defendant  
9 failed to pay all wages within 7 calendar days of the close of the payroll period. (*Id.*, ¶ 22.)  
10 Moreover, Defendant failed to provide Plaintiff and others all required paid sick days at the  
11 "regular rate of pay," and failed to pay all vested and unused vacation time at employees' final  
12 rates of pay at their time of separation. (*Id.*, ¶¶ 26, 34.)

13 Plaintiff further alleges that Defendant failed to provide employees with required meal  
14 and rest breaks or pay associated premiums at the "regular rate of pay." (SAC, ¶¶ 36–41.) As a  
15 result of its other wage and hour violations, Defendant failed to provide accurate itemized wage  
16 statements, and, independently of these other violations, it failed to include the legal name and  
17 address of the employer and all applicable hourly rates. (*Id.*, ¶ 42.) Defendant required Plaintiff  
18 and other aggrieved employees to use their personal cell phones and vehicles for work and failed  
19 to reimburse them for expenses. (*Id.*, ¶¶ 45–48.) Finally, due to its other violations, Defendant  
20 failed to pay all wages owed at separation of employment. (*Id.*, ¶ 49.)

21 Based on these allegations, Plaintiff asserts a single cause of action for PAGA penalties.

## 22 **II. LEGAL STANDARD FOR APPROVING A PAGA SETTLEMENT**

23 Under PAGA, an aggrieved employee may bring a civil action personally and on behalf  
24 of other current or former employees to recover civil penalties for Labor Code violations.  
25 (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other  
26 grounds by *Viking River Cruises, Inc. v. Moriana* (2022) \_\_\_ U.S. \_\_\_, 2022 U.S. LEXIS 2940.)  
27 75 percent of any penalties recovered go to the Labor and Workforce Development Agency  
28 ("LWDA"), leaving the remaining 25 percent for the employees. (*Ibid.*) PAGA is intended "to

1 augment the limited enforcement capability of [LWDA] by empowering employees to enforce  
2 the Labor Code as representatives of the Agency.” (*Id.* at p. 383.) A judgment in a PAGA  
3 action binds all those, including nonparty aggrieved employees, who would be bound by a  
4 judgment in an action brought by the government. (*Id.* at p. 381.)

5 Labor Code section 2699, subdivision (1)(2) provides that “[t]he superior court shall  
6 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s  
7 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*  
8 *Court* (2017) 3 Cal.5th 531, 549.) “[C]lass certification is not required” in this context as in a  
9 class action. (*Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F. Supp. 3d 959, 971  
10 (*Haralson*).)

11 Similar to its review of class action settlements, the Court must “determine  
12 independently whether a PAGA settlement is fair and reasonable,” to protect “the interests of the  
13 public and the LWDA in the enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.*  
14 (2021) 72 Cal.App.5th 56, 76–77 (*Moniz*).) It must make this assessment “in view of PAGA’s  
15 purposes to remediate present labor law violations, deter future ones, and to maximize  
16 enforcement of state labor laws.” (*Id.* at p. 77; see also *Haralson, supra*, 383 F. Supp. 3d at  
17 p. 971 [“when a PAGA claim is settled, the relief provided for under the PAGA [should] be  
18 genuine and meaningful, consistent with the underlying purpose of the statute to benefit the  
19 public ....”], quoting LWDA guidance discussed in *O’Connor v. Uber Technologies, Inc.* (N.D.  
20 Cal. 2016) 201 F.Supp.3d 1110 (*O’Connor*).)

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

1 **III. PLAINTIFF’S INVESTIGATION, SETTLEMENT PROCESS, AND THE**  
2 **PARTIES’ AGREEMENT**

3 The parties exchanged documents and information that allowed both sides to calculate the  
4 potential damages and evaluate potential risk. Defendant produced documents and pay records  
5 that enabled Plaintiff to conduct a full analysis of the alleged unpaid wage, meal/rest break  
6 violations, and other claims. The parties then engaged in a full session of mediation with Tripper  
7 Ortman, Esq. on February 13, 2023. They were able to reach the settlement now before the  
8 Court.

9 The settlement requires Defendant to pay a gross amount of \$750,000. \$250,000 in  
10 attorney fees, litigation costs of \$16,181.65, and \$6,000 in administrative costs will be deducted.  
11 The named plaintiff will seek an enhancement award of \$10,000. The net settlement of  
12 approximately \$467,818.35 will then be distributed 75 percent (\$350,863.76) to the LWDA and  
13 25 percent (\$116,954.59) to the aggrieved employees based on their pay periods worked during  
14 the PAGA period.

15 The aggrieved employees are defined as “all current and former hourly non-exempt  
16 employees of Defendant in California at any time during the PAGA Period [(from April 22, 2021  
17 through March 13, 2023)].” The 651 aggrieved employees will receive an average payment of  
18 about \$179.65.

19 In exchange for the settlement, aggrieved employees will release “any and all claims,  
20 whether known or unknown, that were asserted or could have been asserted based on the facts  
21 and primary rights set forth in the operative pleading in the Action and/or the notice submitted to  
22 the LWDA in connection with the Action, to recover civil penalties pursuant to PAGA for any  
23 alleged violations by Defendant,” including specified Labor Code provisions and other wage and  
24 hour requirements. The release is appropriately tailored to the factual allegations at issue. (See  
25 *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.)  
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1 **IV. DISCUSSION**

2 **A. Potential Verdict Value**

3 Based on the data produced, Plaintiff estimates that his three primary claims (overtime,  
4 meal/rest violations, and derivative claims) would result in a maximum potential penalty award  
5 of \$2,000,000, assuming approximately 20,000 violative pay periods for each Labor Code  
6 violation.

7 Based on this analysis, the settlement represents about 37.5 percent of the maximum  
8 value of the case. Considering the discretionary and uncertain nature of PAGA penalty awards  
9 in general and the nature of the violations at issue here, the Court agrees that the settlement is  
10 fair to those affected and is genuine, meaningful, and reasonable in light of the statute's  
11 purposes.

12 **B. Attorney Fees**

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

22 Here, counsel request a fee award of \$250,000, or one-third of the gross settlement. This  
23 percentage is typical for wage and hour cases, and the Court finds it is reasonable considering  
24 counsel’s lodestar of \$152,600, resulting in a reasonable multiplier of 1.63. (See *Laffitte v.*  
25 *Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503-504 [trial court did not abuse its  
26 discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar  
27 resulting in a multiplier of 2.03 to 2.13].)  
28

1           **C.     Other Costs and Expenses**

2           Counsel's request for litigation costs of \$16,181.65 also appears reasonable based on the  
3 summary provided and is approved. The \$6,000 allocated to administrative costs is also  
4 approved.

5           Finally, the named plaintiff requests an enhancement award of \$10,000. The rationale for  
6 such awards in class actions is that named plaintiffs "should be compensated for the expense or  
7 risk they have incurred in conferring a benefit on other members of the class," considering "1)  
8 the risk to the class representative in commencing suit, both financial and otherwise; 2) the  
9 notoriety and personal difficulties encountered by the class representative; 3) the amount of time  
10 and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal  
11 benefit (or lack thereof) enjoyed by the class representative as a result of the  
12 litigation." (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394–1395,  
13 internal citations and quotations omitted.) These considerations apply equally in the PAGA  
14 context. To support his request for an enhancement award, the named plaintiff provides a  
15 declaration describing his efforts on the case. Applying the relevant factors, the Court finds that  
16 an enhancement award of \$10,000 is appropriate here.

17           **V.     ADMINISTRATION PROCESS**

18           Within 7 days of the Effective Date, Defendant shall pay the gross settlement amount to  
19 the settlement administrator, and within 21 days of settlement approval, it will provide the  
20 administrator with data concerning the aggrieved employees. Within 14 days of the Effective  
21 Date, the administrator will mail checks for all individual PAGA payments, the LWDA payment,  
22 and fees and expenses. The administrator will include an explanatory letter with the individual  
23 payments.

24           Any checks returned as non-deliverable will be re-mailed to any forwarding address  
25 provided or updated address located through the best available technology. Checks will remain  
26 negotiable for 180 days and funds associated with settlement checks remaining uncashed after  
27 that point will be sent to the California State Controller's Office to be held pursuant to the  
28 Unclaimed Property Law in the relevant employee's name.

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2 These administrative procedures are appropriate and are approved, with the modification  
3 that the administrator shall update employees' addresses using the National Change of Address  
4 database before the initial mailing.

5 **VI. ORDER AND JUDGMENT**

6 In accordance with the above, IT IS HEREBY ORDERED, ADJUDGED, AND  
7 DECREED THAT:

8 Plaintiff's motion for approval of the parties' PAGA settlement is GRANTED. The  
9 aggrieved employees are: "all current and former hourly non-exempt employees of Defendant in  
10 California at any time during the PAGA Period [(from April 22, 2021 through March 13,  
11 2023)]."

12 Judgment shall be entered through the filing of this order and judgment. (Code Civ.  
13 Proc., § 668.5.) Plaintiff shall take from his complaint only the relief set forth in the parties'  
14 settlement agreement and this order and judgment. The Court retains jurisdiction over the parties  
15 to enforce the terms of the PAGA settlement agreement and the final order and judgment.

16 The Court sets a compliance hearing for **February 1, 2024 at 2:30 P.M.** in Department  
17 1. At least ten court days before the hearing, Plaintiff's counsel and the settlement administrator  
18 shall submit a summary accounting of the net settlement fund identifying distributions made as  
19 ordered herein; the number and value of any uncashed checks; amounts remitted to the  
20 Controller's Office; the status of any unresolved issues; and any other matters appropriate to  
21 bring to the Court's attention. Counsel may appear at the compliance hearing remotely.

22 **IT IS SO ORDERED.**

23  
24 Date: May 20, 2023

  
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The Honorable Sunil R. Kulkarni  
Judge of the Superior Court