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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

NICOLAS SERAFICA, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

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

Defendants.

Case No.: 21CV386574

(Assigned to the Hon. Sunil R. Kulkarni,
Department 1)

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF SETTLEMENT
AND JUDGMENT**

Date: January 12, 2023

Time: 1:30 P.M.

Dept.: 1

Complaint Filed: September 9, 2021

FAC Filed: October 14, 2021

Trial Date: None Set

1 Plaintiff Nicolas Serafica (“Plaintiff”), and Defendant HGST, Inc. (“Defendant”)
2 (together, the “Parties”) entered into the Class and PAGA Action Settlement Agreement on
3 August 16, 2022 (“Settlement Agreement”) to settle the above-captioned class and PAGA
4 action subject to the Court’s approval (the “Settlement”).

5 This matter is now before the Court on Plaintiff’s Motion for Final Approval of Class
6 Action Settlement, including approval of the Class Representative Enhancement Payment for
7 Plaintiff and Class Counsel’s application for a fee and expense award. The Court has read,
8 heard, and considered all the pleadings and documents submitted, and the presentations made
9 in connection with the Motion which came on for hearing on January 12, 2023.

10 **I. BACKGROUND**

11 On September 9, 2021, Plaintiff commenced this Action in Santa Clara County
12 Superior Court, as an individual and on behalf of other similarly situated employees. The
13 Action asserts claims for (1) failure to pay wages (Cal. Lab. Code §§ 201-204, 218.5, 510,
14 558, 1194, 1197, and 1197.1), (2) failure to provide timely, adequate, and compliant meal
15 periods and pay meal period premiums (id. §§ 226.7 and 512), (3) failure to provide accurate,
16 complete, and compliant wage statements (id. § 226), (4) failure to pay earned wages upon
17 termination and “waiting time” penalties (id. § 201, 202, and 203), and (5) unfair business
18 practices (Cal. Bus. & Prof. Code § 17200 et seq.). On October 18, 2021, Plaintiff filed an
19 amended complaint adding a claim for civil penalties under Labor Code §§ 226.3 and 2698 et
20 seq. for violations of the aforementioned Labor Code provisions and the California Wage
21 Order. The First Amended Complaint (“FAC”) is the operative complaint.

22 **A. Class Members**

23 The “Class” is defined as: “All current and former non-exempt HGST employees in
24 California who worked at any time during the period September 9, 2017 through August 16,
25 2022.”

26 **B. Operation of the Settlement**

27 Pursuant to the Preliminary Approval Order dated September 12, 2022, this Court
28 conditionally certified the Class and granted preliminary approval to the Settlement

1 Agreement. The Preliminary Approval Order also approved of the proposed forms of notice
2 and notice plan. The Court entered the Preliminary Approval Order after review and
3 consideration of all of the pleadings filed in connection herewith, and the oral presentations
4 made by counsel at the hearing.

5 In compliance with the Preliminary Approval Order, the Notice of Settlement (“Class
6 Notice”) was sent to all Class Members via U.S. mail. Follow-up mailings were sent to
7 twenty-one (21) individuals, and six (6) Class Notices remain undeliverable. The notice
8 process was timely completed.

9 This Court finds that the Settlement is the product of serious, informed, non-collusive
10 negotiations, has no obvious deficiencies, and does not improperly grant preferential treatment
11 to any individuals. The Court further finds that the Settlement is fair, reasonable, and adequate
12 and that Plaintiff has satisfied the standards for final approval of a class action settlement
13 under California law. Under the provisions of California Code of Civil Procedure section 382
14 and Federal Rule of Civil Procedure 23, as approved for use by the California state court in
15 *Vasquez v. Superior Court*, 4 Cal. 3d 800, 821 (1971), the trial court has discretion to certify a
16 class where:

17 [Q]uestions of law or fact common to the members of the class
18 predominate over any questions affecting only individual
19 members, and that a class action is superior to the available
... Fed. R. Civ. Proc. 23.

20 Certification of a settlement class is the appropriate judicial device under these circumstances.

21 Based on the foregoing, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED
22 AS FOLLOWS:

23 1. The Court, for purposes of this Order, adopts and incorporates by reference the
24 Settlement Agreement and all defined terms as set forth therein.

25 2. The Court has jurisdiction over the subject matter of the litigation, the Class
26 Representative, the other members of the Settlement Class, and Defendant.

27 3. The Court finds that the dissemination of the Notice Packet, as disseminated by
28 the appointed Settlement Administrator, Phoenix Settlement Administrators, to the Class

1 Members, constituted the best notice practicable under the circumstances to all persons within
2 the definition of the Class, and fully met the requirements of California law and due process
3 under the United States Constitution. None of the Class Members objected to the Settlement or
4 opted out of the Settlement.

5 4. The Court approves the settlement of the above-captioned action, as set forth in
6 the Settlement Agreement, as fair, just, reasonable, and adequate as to the Parties. The Parties
7 are directed to comply with and perform in accordance with the terms set forth in the
8 Settlement Agreement.

9 5. Except as otherwise provided in the Settlement Agreement, the Parties are to
10 bear their own costs and attorneys' fees.

11 6. The Court hereby certifies the following Class for settlement purposes only:
12 [a]ll current and former non-exempt HGST employees in California who worked at any time
13 during the period September 9, 2017 through August 16, 2022.

14 7. With respect to the Class and for purposes of approving the settlement only and
15 for no other purpose, this Court finds and concludes that: (a) the members of the Class are
16 ascertainable and so numerous that joinder of all members is impracticable; (b) there are
17 questions of law or fact common to the Class, and there is a well-defined community of
18 interest among members of the Class with respect to the subject matter of the non-exempt
19 claims in the Litigation; (c) the claims of Class Representative is typical of the claims of the
20 members of the Class; (d) the Class Representative has fairly and adequately protected the
21 interests of the members of the Class; (e) a class action is superior to other available methods
22 for an efficient adjudication of this controversy; and (f) the counsel of record for the Class
23 Representative, *i.e.*, Class Counsel, are qualified to serve as counsel for the Plaintiff in his
24 individual and representative capacity and for the Class.

25 8. Within thirty (30) business days following the Effective Date of this Order, as
26 defined by the Settlement Agreement, Defendant shall remit to a Qualified Settlement Fund
27 established by the Settlement Administrator the Gross Settlement Amount of One Million One
28 Hundred Forty-Five Thousand Dollars (\$1,145,000.00), pursuant to the terms of the

1 Settlement Agreement.

2 9. From the Gross Settlement Amount, the Settlement Administrator shall pay:

3 (a) to Class Counsel attorneys' fees in the amount of Three Hundred Eighty-
4 One Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$381,666.67) and
5 reimbursement of costs in the amount of Eight Thousand Two Hundred and Twenty-One
6 Dollars and Twelve Cents (\$8,221.12);

7 (b) a service award to the Class Representative Nicolas Serafica to reimburse
8 him for his unique services, and as consideration for the execution of a general release, in the
9 amount of Ten Thousand Dollars (\$10,000.00);

10 (c) the sum of Thirty Thousand Dollars (\$30,000.00) to the California Labor
11 and Workforce Development Agency for its seventy-five percent (75%) share of PAGA
12 penalties; and

13 (d) the sum of Twelve Thousand Two Hundred Fifty Dollars (\$12,250.00) to
14 the Settlement Administrator, Phoenix Settlement Administrators, for its fees and costs
15 relating to the settlement administration process.

16 10. The Court finds that these amounts are fair and reasonable. The Settlement
17 Administrator is directed to make such payments in accordance with the terms of the
18 Settlement Agreement.

19 11. The Court approves the Individual Settlement Payment amounts, which shall be
20 distributed by the Settlement Administrator pursuant to the terms of the Settlement Agreement
21 from the Net Settlement Amount, after payment of those amounts set forth in Paragraph 9.

22 12. The Court hereby enters final judgment in this case in accordance with the
23 terms of the Settlement, Preliminary Approval Order, and this Order.

24 13. By operation of the entry of this Order, Plaintiff, all Class Members, and all
25 Aggrieved Employees are permanently barred from prosecuting against Defendant and
26 Released Parties the Released Class Claims and the Precluded PAGA Claims.

27 14. As of the Effective Date, Plaintiff, all Class Members, and all Aggrieved
28 Employees, and their heirs, estates, trustees, executors, administrators, principals,

1 beneficiaries, representatives, agents, assigns, and successors, and/or anyone claiming through
2 them or acting or purporting to act for them or on their behalf, regardless of whether they
3 received actual notice of the proposed Settlement, have conclusively compromised, settled,
4 discharged, and released the Released Class Claims and the Precluded PAGA Claims against
5 Defendant and the Released Parties, and are bound by the provisions of the Settlement
6 Agreement and this Order.

7 15. The Settlement Agreement and this Order are binding on, and have *res judicata*
8 and preclusive effect in, all pending and future lawsuits or other proceedings that encompass
9 Plaintiff's, Class Members', and Aggrieved Employees' Released Claims and Precluded
10 PAGA Claims and that are maintained by or on behalf of them and/or their heirs, estates,
11 trustees, executors, administrators, principals, beneficiaries, representatives, agents, assigns,
12 and successors, and/or anyone claiming through them or acting or purporting or act for them or
13 on their behalf, regardless of whether the Class Member or Aggrieved Employee previously
14 initiated or subsequently initiates individual litigation or other proceedings encompassed by
15 the Class Members' Released Claims and the Aggrieved Employees' Precluded Claims, and
16 even if such Class Member never received actual notice of the Action or this Settlement.

17 16. Except as explicitly provided in the Settlement Agreement, neither the
18 Settlement Agreement nor any exhibit, document, or instrument delivered thereunder, nor any
19 statement, transaction or proceeding in connection with the negotiation, execution, or
20 implementation of the Settlement, nor any proceedings taken pursuant thereto, shall be
21 admissible in this or any other proceeding for any purpose, including as evidence, a
22 presumption, concession, or an admission. Without limitation of the foregoing, nothing
23 contained in the Settlement nor any exhibit, document, or instrument delivered thereunder, nor
24 any statement, transaction, or proceeding in connection with the negotiation, execution or
25 implementation of the Settlement, nor any proceedings taken pursuant thereto, shall be given
26 any form of *res judicata*, collateral estoppel, or judicial estoppel effect against Defendant or
27 Released Parties in any administrative or judicial forum or proceeding.

28 17. Without affecting the finality of the Settlement or Judgment entered, this Court

1 shall retain exclusive and continuing jurisdiction over the action and the Parties, including all
2 Settlement Class Members, for purposes of enforcing and interpreting this Order and the
3 Settlement.

4 18. Pursuant to Code of Civil Procedure Section 384, no later than _____,
5 2023, the Parties shall submit a report to the Court specifying the total amount paid to Class
6 Members, and the residual of unclaimed funds that will be paid to the entity identified as the
7 recipient of such funds in the proposed settlement, along with a proposed amended judgment.
8 No later than 5 days after receipt of notice of the entry of the amended judgment, the parties
9 shall submit the amended judgment to the Judicial Council, pursuant to Code of Civil
10 Procedure Section 384.5, and shall file a proof of service with this court confirming this.

11
12 IT IS SO ORDERED.

13
14 DATED: _____

HON. SUNIL R. KULKARNI
SUPERIOR COURT OF CALIFORNIA