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Attorneys for Plaintiff and the Class

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

**DECLARATION OF B. JAMES
FITZPATRICK IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: January 12, 2023
Time: 1:30 p.m.
Dept.: 1

1 I, B. James Fitzpatrick, declare as follows:

2 1. I am an attorney duly licensed to practice before all courts in the State of
3 California, and I am a partner in law firm of Fitzpatrick & Swanston, counsel of record for the
4 named plaintiff Nicolas Serafica ("Plaintiff"). I have personal knowledge of the facts set forth
5 below and if called to testify I could and would do so competently.

6 2. Class Counsels' application for an award of attorneys' fees and reimbursement
7 of litigation costs is reasonable and fair. These amounts are well within what is reasonable and
8 customary in both wage and hour settlements and class action settlements in general and is
9 based on the skill displayed by Class Counsel, the effort and resources invested in this case by
10 Class Counsel, the factual and legal complexities of this case, the importance of the interests
11 which are the subject of this litigation, the risks undertaken by Class Counsel, and the degree
12 of success achieved by Class Counsel.

13 3. I am one of the attorneys primarily responsible for work performed in this
14 litigation. I am familiar with most aspects of this case and tasks undertaken by the various
15 members of this firm in litigating this case. I have been assisted by attorney Laura L. Franklin
16 and several paralegals in my office. As a result of my firm's diligence in pursuing the factual
17 and legal issues presented by this case, we were able to realistically assess the Class Members'
18 claims, evaluate their damages, and Defendant's exposure. All work performed by our office
19 is done on a contingency basis. Our firm has received no compensation for our time invested
20 or expenses incurred in litigating this case. We have prosecuted this litigation up to this point,
21 taking the risk that we ultimately would be faced with not receiving any compensation for our
22 work. Since the start of this case, counsel conducted extensive factual investigation before
23 reaching a settlement, and further engaged in extensive litigation. My office will have
24 invested 103.5 hours on this case. Attached hereto as **Exhibit A** is a detailed summary of
25 tasks and hours spent by this firm in litigating this case.

26 4. My qualifications are as follows: I received my bachelor's degree from the
27 University of California, Santa Barbara and my Juris Doctor degree from the University of
28 Santa Clara School of Law. I have practiced law since 1987. The primary emphasis of my

1 practice is employment litigation. I have represented both employers and employees.
2 Approximately 15 years ago my office commenced handling plaintiff class action wage and
3 hour cases. Since then, my office has handled hundreds of wage and hour cases to conclusion
4 and has been class counsel and/or co-counsel in over 100 class actions. Currently, we have
5 multiple ongoing wage and hour class actions in Alameda County Superior Court, Monterey
6 County Superior Court, Nevada County Superior Court, Santa Clara Superior Court, San
7 Benito Superior Court, Santa Cruz Superior Court, Ventura County Superior Court, and the
8 United States District Court, Northern District of California, where we will seek class
9 certification by way of a settlement or a class certification motion.

10 5. The hourly rate for attorneys in this firm is \$750.00 and the hourly rate for
11 paralegals is \$185.00. Having represented both employees and employers in the course of my
12 practice, I am familiar with the contingent fee market throughout Northern California, where I
13 primarily practice law, and in other areas of the state in which my firm regularly litigates. In
14 light of our experience and my knowledge of the market, I believe that the hourly rates
15 charged by my firm, and previously approved by this Court, are fair and reasonable and less
16 than those charged by my colleagues in other areas of California and the national market for
17 prosecuting class actions. As such, Counsel requests that the Court grant an hourly rate of
18 \$750.00 for work done on this matter by attorneys in my office and \$185.00 per hour for
19 paralegal work.

20 6. Class Counsel risked not only a great deal of time, but also a great deal of
21 expense to ensure the successful litigation of this action on behalf of all Class Members. In
22 addition to the supporting documentation and legal authority presented in Plaintiffs' moving
23 papers, Plaintiffs' counsel submits that the attorneys' fees proposed are not just fair and
24 reasonable; they are necessary in order to incentivize attorneys to take on the risk of time and
25 expense associated with Class and PAGA actions. Indeed, many times counsel expend
26 enormous amounts of work and out of pocket costs in the interest of aggrieved employees
27 and/or the State of California, only to end up without any recovery whatsoever. For example,
28 Plaintiffs' counsel expended significant time and expenses in a wage/hour class and PAGA

1 action, only to have the District Court grant summary judgment in its entirety against Plaintiff.
2 See *Guynn-Neupane*, 2021 WL 4481661 (N.D. Cal. Sep. 30, 2021). There are actual risks that
3 Plaintiffs request this Court take into account when considering the requested attorneys' fees,
4 including any multiplier to be accounted into Plaintiffs' lodestar.

5 7. To date my firm has incurred costs in the amount of \$3,130.02. The costs are all
6 litigation-related costs. All costs were reasonable and necessary to the effective prosecution of
7 this matter. Class Counsel advanced costs with no guarantee that any of the costs advanced
8 would be recovered. *Berkeley Cement, Inc. v. Regents of the University of California*, (2019)
9 30 Cal. App. 5th 1133, explains that mediation-related expenses are recoverable under the
10 circumstances of this case. Attached hereto as **Exhibit B** is a copy of the costs my firm has
11 incurred in connection with prosecution of this lawsuit.

12 8. Fitzpatrick & Swanston, jointly with co-counsel, has zealously represented
13 Plaintiff and the Class, pursuing this lawsuit to conclusion.

14 9. Neither my firm nor my co-counsel has any conflict of interest with the Plaintiff
15 or any Class Member. My firm believes the settlement is fair, reasonable, and in the best
16 interest of the class.

17 10. I do not have any association with the designated *cy pres* recipient, Legal Aid at
18 Work, that would present a conflict of interest.

19 I declare under penalty of perjury under the laws of the State of California that the
20 foregoing is true and correct and if called as a witness I could and would competently testify to
21 each of the matters stated herein, and I state that these matters are based upon my own
22 personal knowledge acquired through first-hand observation, except where stated otherwise.
23 This declaration was executed by me on December 19, 2022, in Salinas, California.

24
25 /s/ B. James Fitzpatrick
26 B. James Fitzpatrick
27
28

EXHIBIT A

TASKS AND HOURS

The tasks referenced below involved work by attorneys and paralegals. The amount of time spent by each is detailed below.

I. INVESTIGATION

Task

- Meetings/telephonic conferences with client and current/former employees regarding their employment and alleged violations;
- Review of documents provided by client and current/former employees;
- Review personnel files;
- Numerous intra-office meetings/conferences regarding planning, results and details of investigations;
- State/Federal court search for other lawsuits against defendant;
- Research regarding the entities to be named in the Superior Court complaint;
- Legal research regarding IWC Wage Orders;
- Legal research regarding claims that would be alleged in the Superior Court Complaint;

Attorney Hours: 15

Paralegal Hours: 4.5

II. PLEADINGS

Task

- Receive and review drafts of complaint; and
- Receive and review answer.

Attorney Hours: 5

Paralegal Hours: 1.5

III. MEDIATION

Task

- Multiple follow up meetings with client and current/former employees to prepare for mediation;
- Legal research;
- Analysis of damage models calculating damages, interest and penalties;
- Follow up intra-office meetings/conferences;
- Receive, review, and revise mediation brief;
- Prepare for and attend mediation session;
- Receive and review MOU; and
- Receive and review settlement agreement.

Attorney Hours: 50

Paralegal Hours: 5.5

IV. MATTERS RELATING TO MOTION FOR PRELIMINARY APPROVAL / MOTION FOR FINAL APPROVAL

Task

- Prepare drafts of motion for preliminary approval;
- Receive and review Order granting preliminary approval;
- Receive and review Claims Administrator class notice updates;
- Receive and review drafts of motion for final approval; and
- Prepare drafts of attorney declaration.

Attorney Hours: 20

Paralegal Hours: 2

Total Hours: 103.5

EXHIBIT B

Cost/Expense Detail

Date	Code	Check #	Type	Units	Amount	Description	Date Billed	Amount Billed
S0060	Serafica, Nicolas							
600	Serafica v. Labor & Employment							
8/11/22	15	830	Exp.		3,062.50	Jams Mediation Fees		
8/16/22	102		Cost		67.52	Odyssey Efile - Motion		
Matter Total					3,130.02			.00
Client Total					3,130.02			.00
Report Total:								
Total					3,130.02			.00

Types: Unbilled Costs, Unbilled Expenses, Billed Costs, Billed Expenses

Selection criteria: Client: S0060 Matter: 600

Sorted by: Client Number / Matter Number