

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA

NICOLAS SERAFICA,

Plaintiff,

v.

HGST, INC. et al.,

Defendants.

Case No.: 21CV386574

**ORDER CONCERNING  
PLAINTIFF'S MOTION FOR  
PRELIMINARY APPROVAL OF  
SETTLEMENT OF CLASS/PAGA  
CLAIMS**

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiff Nicholas Serafica alleges that Defendant HGST, Inc. failed to compensate employees for time spent undergoing security and temperature checks and committed other wage and hour violations.

Now before the Court is Plaintiff's motion for preliminary approval of a settlement of the class and PAGA claims. The Court issued a tentative ruling on September 7, 2022, and no one contested the ruling at the September 8 hearing.

As discussed below, the Court GRANTS preliminary approval.

**I. BACKGROUND**

Defendant HGST, Inc. is a Delaware corporation that manufactures, distributes, and sells hard disk drives, external storage drives, and other computer storage devices. (First Amended

1 Class and Representative Action Complaint (“FAC”), ¶ 10.) Plaintiff worked for Defendant as a  
2 non-exempt operator from about September 2017 to January 2021. (*Id.*, ¶ 8.)

3 Plaintiff alleges that he and other employees were required to undergo daily security  
4 check-in/check-out procedures and temperature checks while off-the-clock, both before they  
5 clocked in for their shifts and after they clocked out. (FAC, ¶ 23.) Employees were not paid  
6 minimum, regular, or overtime wages for this time, and these procedures also interfered with  
7 their meal breaks. (*Ibid.*) As a result, employees are entitled to waiting time penalties and  
8 received inaccurate wage statements. (*Ibid.*) In addition, Plaintiff and other employees received  
9 wage statements that failed to identify the number of hours worked for shift differential wages.  
10 (*Ibid.*)

11 Based on these allegations, Plaintiff asserts putative class claims against Defendant for:  
12 (1) failure to pay wages; (2) violation of Labor Code sections 226.7 and 512; (3) violation of  
13 Labor Code section 226, subdivision (a); and (4) violation of Business & Professions Code  
14 section 17200, et seq. Plaintiff also brings (5) a representative claim for PAGA penalties.

15 Now, Plaintiff moves for an order preliminarily approving the settlement of the class and  
16 PAGA claims, provisionally certifying the settlement class, approving the form and method for  
17 providing notice to the class, and scheduling a final fairness hearing

## 18 **II. LEGAL STANDARDS FOR SETTLEMENT APPROVAL**

### 19 **A. Class Action**

20 Generally, “questions whether a [class action] settlement was fair and reasonable,  
21 whether notice to the class was adequate, whether certification of the class was proper, and  
22 whether the attorney fee award was proper are matters addressed to the trial court’s broad  
23 discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),  
24 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th  
25 260.)

26  
27 In determining whether a class settlement is fair, adequate and reasonable, the  
28 trial court should consider relevant factors, such as the strength of plaintiffs’ case,

1 the risk, expense, complexity and likely duration of further litigation, the risk of  
2 maintaining class action status through trial, the amount offered in settlement, the  
3 extent of discovery completed and the stage of the proceedings, the experience  
4 and views of counsel, the presence of a governmental participant, and the reaction  
5 of the class members to the proposed settlement.

6  
7 (*Wershba, supra*, 91 Cal.App.4th at pp. 244–245, internal citations and quotations omitted.)

8 In general, the most important factor is the strength of the plaintiffs’ case on the merits,  
9 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)  
10 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and  
11 weighing of factors depending on the circumstances of each case. (*Wershba, supra*, 91  
12 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the  
13 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or  
14 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a  
15 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation  
16 marks omitted.)

17  
18 The burden is on the proponent of the settlement to show that it is fair and  
19 reasonable. However “a presumption of fairness exists where: (1) the settlement  
20 is reached through arm’s-length bargaining; (2) investigation and discovery are  
21 sufficient to allow counsel and the court to act intelligently; (3) counsel is  
22 experienced in similar litigation; and (4) the percentage of objectors is small.”

23  
24 (*Wershba, supra*, 91 Cal.App.4th at p. 245, citation omitted.) The presumption does not permit  
25 the Court to “give rubber-stamp approval” to a settlement; in all cases, it must “independently  
26 and objectively analyze the evidence and circumstances before it in order to determine whether  
27 the settlement is in the best interests of those whose claims will be extinguished,” based on a  
28 sufficiently developed factual record. (*Kullar, supra*, 168 Cal.App.4th at p. 130.)

1           **B.       PAGA**

2           Labor Code section 2699, subdivision (l)(2) provides that “[t]he superior court shall  
3 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s  
4 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*  
5 *Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA  
6 go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-  
7 five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC*  
8 (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v.*  
9 *Moriana* (2022) \_\_\_ U.S. \_\_\_, 2022 U.S. LEXIS 2940 (*Viking River*).)

10           Similar to its review of class action settlements, the Court must “determine independently  
11 whether a PAGA settlement is fair and reasonable,” to protect “the interests of the public and the  
12 LWDA in the enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72  
13 Cal.App.5th 56, 76–77.) It must make this assessment “in view of PAGA’s purposes to  
14 remediate present labor law violations, deter future ones, and to maximize enforcement of state  
15 labor laws.” (*Id.* at p. 77; see also *Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383  
16 F. Supp. 3d 959, 971 [“when a PAGA claim is settled, the relief provided for under the PAGA  
17 [should] be genuine and meaningful, consistent with the underlying purpose of the statute to  
18 benefit the public ....”], quoting LWDA guidance discussed in *O’Connor v. Uber Technologies,*  
19 *Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O’Connor*).)

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

1 **III. SETTLEMENT PROCESS**

2 The parties engaged in informal discovery to prepare for mediation. Defendant provided  
3 information about the number of putative class members; the number of shifts, pay periods, and  
4 wage statements at issue; the hourly rates of pay for class members; and its various wage and  
5 hour policies and practices and asserted defenses. This allowed Plaintiff to assess the potential  
6 exposure in the case and the procedural and substantive risks.

7 On June 17, 2021, the parties engaged in a full day of mediation with Hon. Brian C.  
8 Walsh (Ret.). They were able to reach the settlement now before the Court.

9 **IV. SETTLEMENT PROVISIONS**

10 The non-reversionary gross settlement amount is \$1,145,000. Attorney fees of up to  
11 \$381,666.67 (one-third of the gross settlement), litigation costs of up to \$30,000, and up to  
12 \$12,250 in administration costs will be paid from the gross settlement. \$40,000 will be allocated  
13 to PAGA penalties, 75 percent of which will be paid to the LWDA. The named plaintiff will  
14 seek an incentive award of \$10,000.

15 The net settlement, approximately \$681,083.33, will be allocated to settlement class  
16 members proportionally based on their workweeks during the class period. The average payment  
17 will be around \$435 to each of the 1,565 class members. Class members will not be required to  
18 submit a claim to receive their payments. For tax purposes, settlement payments will be  
19 allocated 10 percent to wages and 90 percent to penalties and interest, with 100 percent of the  
20 PAGA payments allocated to penalties. The employer's share of taxes will be paid separately  
21 from the gross settlement. Funds associated with checks uncashed after 180 days will be  
22 transmitted to Legal Aid at Work.

23 In exchange for the settlement, class members who do not opt out will release all claims,  
24 debts, etc. "that were alleged or that reasonably could have been alleged based on the facts  
25 alleged in the Action, as amended, that acc[ru]ed during the Settlement Period, including but not  
26 limited to" the causes of action alleged in the FAC. Similarly, the PAGA release encompasses  
27 "[a]ll rights to PAGA claims ... related to any claims that Plaintiff brought or could have brought  
28 under the facts he has alleged in this Action that accrued during the PAGA Period." The releases

are appropriately tailored to the allegations at issue. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.)

## **V. FAIRNESS OF SETTLEMENT**

Plaintiff estimates that the maximum exposure for the class claims in this action is \$5.3 million, including waiting time and wage statement penalties. The PAGA penalties could total \$10 million if multiple violations were “stacked,” or \$2.5 million if not. The settlement thus represents about 7.5 percent of the maximum value of the entire case, including penalties, or almost 15 percent of its value without “stacking” PAGA penalties. Considering the anticipated difficulties on the merits and in proving violations on a classwide basis as discussed in Plaintiff’s motion, as well as the high portion of the action’s value attributable to uncertain penalties, the Court agrees that the settlement consideration is appropriate. Additional risk was created by Plaintiff’s execution of an arbitration agreement with a class and PAGA waiver. The Court finds that the settlement is fair and reasonable to the class, and the PAGA allocation is genuine, meaningful, and reasonable in light of the statute’s purposes.

Of course, the Court retains an independent right and responsibility to review the requested attorney fees and award only so much as it determines to be reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127–128.) While 1/3 of the common fund for attorney fees is generally considered reasonable, counsel shall submit lodestar information prior to the final approval hearing in this matter so the Court can compare the lodestar information with the requested fees. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 504 [trial courts have discretion to double-check the reasonableness of a percentage fee through a lodestar calculation].) Counsel must also address their fee-splitting arrangement at that time.

## **VI. PROPOSED SETTLEMENT CLASS**

Plaintiff requests that the following settlement class be provisionally certified:

All current and former non-exempt HGST employees in California who worked at any time during the period September 9, 2017 through August 16, 2022.

1           **A.       Legal Standard for Certifying a Class for Settlement Purposes**

2           Rule 3.769(d) of the California Rules of Court states that “[t]he court may make an order  
3 approving or denying certification of a provisional settlement class after [a] preliminary  
4 settlement hearing.” California Code of Civil Procedure Section 382 authorizes certification of a  
5 class “when the question is one of a common or general interest, of many persons, or when the  
6 parties are numerous, and it is impracticable to bring them all before the court ....”

7           Section 382 requires the plaintiff to demonstrate by a preponderance of the evidence:  
8 (1) an ascertainable class and (2) a well-defined community of interest among the class  
9 members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, 332 (*Sav-On*  
10 *Drug Stores*)). “Other relevant considerations include the probability that each class member  
11 will come forward ultimately to prove his or her separate claim to a portion of the total recovery  
12 and whether the class approach would actually serve to deter and redress alleged wrongdoing.”  
13 (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of  
14 establishing that class treatment will yield “substantial benefits” to both “the litigants and to the  
15 court.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.)

16           In the settlement context, “the court’s evaluation of the certification issues is somewhat  
17 different from its consideration of certification issues when the class action has not yet settled.”  
18 (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.) As no trial is anticipated in the  
19 settlement-only context, the case management issues inherent in the ascertainable class  
20 determination need not be confronted, and the court’s review is more lenient in this respect. (*Id.*  
21 at pp. 93–94.) But considerations designed to protect absentees by blocking unwarranted or  
22 overbroad class definitions require heightened scrutiny in the settlement-only class context, since  
23 the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id.* at p. 94.)

24           **B.       Ascertainable Class**

25           A class is ascertainable “when it is defined in terms of objective characteristics and  
26 common transactional facts that make the ultimate identification of class members possible when  
27 that identification becomes necessary.” (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980  
28 (*Noel*)). A class definition satisfying these requirements

1  
2 puts members of the class on notice that their rights may be adjudicated in the  
3 proceeding, so they must decide whether to intervene, opt out, or do nothing and  
4 live with the consequences. This kind of class definition also advances due  
5 process by supplying a concrete basis for determining who will and will not be  
6 bound by (or benefit from) any judgment.

7  
8 (*Noel, supra*, 7 Cal.5th at p. 980, citation omitted.)

9 “As a rule, a representative plaintiff in a class action need not introduce evidence  
10 establishing how notice of the action will be communicated to individual class members in order  
11 to show an ascertainable class.” (*Noel, supra*, 7 Cal.5th at p. 984.) Still, it has long been held  
12 that “[c]lass members are ‘ascertainable’ where they may be readily identified ... by reference to  
13 official records.” (*Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932, disapproved of on  
14 another ground by *Noel, supra*, 7 Cal.5th 955; see also *Cohen v. DIRECTV, Inc.* (2009) 178  
15 Cal.App.4th 966, 975-976 [“The defined class of all HD Package subscribers is precise, with  
16 objective characteristics and transactional parameters, and can be determined by DIRECTV’s  
17 own account records. No more is needed.”].)

18 Here, the estimated 1,565 class members are readily identifiable based on Defendant’s  
19 records, and the settlement class is appropriately defined based on objective characteristics. The  
20 Court finds that the settlement class is numerous, ascertainable, and appropriately defined.

### 21 **C. Community of Interest**

22 The “community-of-interest” requirement encompasses three factors: (1) predominant  
23 questions of law or fact, (2) class representatives with claims or defenses typical of the class, and  
24 (3) class representatives who can adequately represent the class. (*Sav-On Drug Stores, supra*, 34  
25 Cal.4th at pp. 326, 332.)

26 For the first community of interest factor, “[i]n order to determine whether common  
27 questions of fact predominate the trial court must examine the issues framed by the pleadings  
28 and the law applicable to the causes of action alleged.” (*Hicks v. Kaufman & Broad Home Corp.*

1 (2001) 89 Cal.App.4th 908, 916 (*Hicks*).) The court must also examine evidence of any conflict  
2 of interest among the proposed class members. (See *J.P. Morgan & Co., Inc. v. Superior Court*  
3 (2003) 113 Cal.App.4th 195, 215.) The ultimate question is whether the issues which may be  
4 jointly tried, when compared with those requiring separate adjudication, are so numerous or  
5 substantial that the maintenance of a class action would be good for the judicial process and to  
6 the litigants. (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1104–1105  
7 (*Lockheed Martin*).) “As a general rule if the defendant’s liability can be determined by facts  
8 common to all members of the class, a class will be certified even if the members must  
9 individually prove their damages.” (*Hicks, supra*, 89 Cal.App.4th at p. 916.)

10 Here, common legal and factual issues predominate. Plaintiff’s claims all arise from  
11 Defendant’s wage and hour practices applied to the similarly-situated class members.

12 As to the second factor,  
13

14 The typicality requirement is meant to ensure that the class representative is able  
15 to adequately represent the class and focus on common issues. It is only when a  
16 defense unique to the class representative will be a major focus of the litigation,  
17 or when the class representative’s interests are antagonistic to or in conflict with  
18 the objectives of those she purports to represent that denial of class certification is  
19 appropriate. But even then, the court should determine if it would be feasible to  
20 divide the class into subclasses to eliminate the conflict and allow the class action  
21 to be maintained.  
22

23 (*Medraza v. Honda of North Hollywood* (2008) 166 Cal. App. 4th 89, 99, internal citations,  
24 brackets, and quotation marks omitted.)

25 Like other members of the class, Plaintiff was employed by Defendant as a non-exempt  
26 employee and alleges that he experienced the violations at issue. The anticipated defenses are  
27 not unique to Plaintiff, and there is no indication that Plaintiff’s interests are otherwise in conflict  
28 with those of the class.

1 Finally, adequacy of representation “depends on whether the plaintiff’s attorney is  
2 qualified to conduct the proposed litigation and the plaintiff’s interests are not antagonistic to the  
3 interests of the class.” (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.) The class  
4 representative does not necessarily have to incur all of the damages suffered by each different  
5 class member in order to provide adequate representation to the class. (*Wershba, supra*, 91  
6 Cal.App.4th at p. 238.) “Differences in individual class members’ proof of damages [are] not  
7 fatal to class certification. Only a conflict that goes to the very subject matter of the litigation  
8 will defeat a party’s claim of representative status.” (*Ibid.*, internal citations and quotation marks  
9 omitted.)

10 Plaintiff has the same interest in maintaining this action as any class member would  
11 have. Further, he has hired experienced counsel. Plaintiff has sufficiently demonstrated  
12 adequacy of representation.

13 **D. Substantial Benefits of Class Certification**

14 “[A] class action should not be certified unless substantial benefits accrue both to  
15 litigants and the courts. . . .” (*Basurco v. 21st Century Ins.* (2003) 108 Cal.App.4th 110, 120,  
16 internal quotation marks omitted.) The question is whether a class action would be superior to  
17 individual lawsuits. (*Ibid.*) “Thus, even if questions of law or fact predominate, the lack of  
18 superiority provides an alternative ground to deny class certification.” (*Ibid.*) Generally, “a  
19 class action is proper where it provides small claimants with a method of obtaining redress and  
20 when numerous parties suffer injury of insufficient size to warrant individual action.” (*Id.* at pp.  
21 120–121, internal quotation marks omitted.)

22 Here, there are an estimated 1,565 class members. It would be inefficient for the Court to  
23 hear and decide the same issues separately and repeatedly for each class member. Further, it  
24 would be cost prohibitive for each class member to file suit individually, as each member would  
25 have the potential for little to no monetary recovery. It is clear that a class action provides  
26 substantial benefits to both the litigants and the Court in this case.  
27  
28

1 **VII. NOTICE**

2 The content of a class notice is subject to court approval. (Cal. Rules of Court, rule  
3 3.769(f).) “The notice must contain an explanation of the proposed settlement and procedures  
4 for class members to follow in filing written objections to it and in arranging to appear at the  
5 settlement hearing and state any objections to the proposed settlement.” (*Ibid.*) In determining  
6 the manner of the notice, the court must consider: “(1) The interests of the class; (2) The type of  
7 relief requested; (3) The stake of the individual class members; (4) The cost of notifying class  
8 members; (5) The resources of the parties; (6) The possible prejudice to class members who do  
9 not receive notice; and (7) The res judicata effect on class members.” (Cal. Rules of Court, rule  
10 3.766(e).)

11 Here, the notice describes the lawsuit, explains the settlement, and instructs class  
12 members that they may opt out of the settlement or object. The gross settlement amount and  
13 estimated deductions are provided. Class members are informed of their qualifying workweeks  
14 as reflected in Defendant’s records and instructed how to dispute this information. The notice  
15 makes it clear that class members may appear at the final fairness hearing to make an oral  
16 objection without filing a written objection. Class members are given 45 days to request  
17 exclusion from the class, submit a written objection to the settlement, or dispute their workweek  
18 information. And the notice describes how notice of final judgment will be provided to the class  
19 via posting to the administrator’s web site.

20 The notice is generally adequate, but must be modified to instruct class members that  
21 they may object to the settlement by simply providing their name, without the need to provide  
22 their telephone number or other identifying information. Regarding appearances at the final  
23 fairness hearing, the notice shall be further modified to instruct class members as follows:

24  
25 Hearings before the judge overseeing this case will be conducted remotely. (As  
26 of August 15, 2022, the Court’s remote platform is Microsoft Teams.) Class  
27 members who wish to appear should contact class counsel at least three days  
28 before the hearing if possible. Instructions for appearing remotely are provided at

1 [https://www.scsccourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml) and  
2 should be reviewed in advance. Class members may appear remotely using the  
3 Microsoft Teams link for Department 1 (Afternoon Session) or by calling the toll-  
4 free conference call number for Department 1.

5  
6 Turning to the notice procedure, the parties have selected Phoenix Settlement  
7 Administrators as the settlement administrator. The administrator will mail the notice packet  
8 within 51 calendar days of preliminary approval, after updating class members' addresses using  
9 the National Change of Address Database. Any returned notices will be re-mailed to any  
10 forwarding address provided or located using a computer-based skip-trace search. These notice  
11 procedures are appropriate and are approved.

12 **VIII. CONCLUSION**

13 Plaintiff's motion for preliminary approval is GRANTED. The final approval hearing  
14 shall take place on **January 12, 2023** at 1:30 p.m. in Dept. 1. The following class is  
15 preliminarily certified for settlement purposes:

16  
17 All current and former non-exempt HGST employees in California who worked at  
18 any time during the period September 9, 2017 through August 16, 2022.

19  
20 Before final approval, Plaintiff shall lodge any individual settlement agreement he may  
21 have executed in connection with his employment with Defendant for the Court's review.

22 **IT IS SO ORDERED.**

23 Date: September 12, 2022

24   
\_\_\_\_\_  
25 The Honorable Sunil R. Kulkarni  
26 Judge of the Superior Court  
27  
28