

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 FINAL APPROVAL OF
CLASS/PAGA SETTLEMENT AND
JUDGMENT**

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.

The parties reached a settlement, which the Court preliminarily approved in an order filed on September 12, 2022. The factual and procedural background of the action and the Court's analysis of the settlement and settlement class are set forth in that order.

Before the Court is Plaintiff's motion for final approval of the settlement and for approval of his attorney fees, costs, and service award. Plaintiff's motion is unopposed. The Court issued tentative rulings on January 3 and January 11, 2023, which no one contested at the hearing on January 12. The Court now issues its final order, which GRANTS final approval, but does not

1 approve an additional incentive award to the named plaintiff in light of his individual
2 settlement.

3 **I. LEGAL STANDARDS FOR SETTLEMENT APPROVAL**

4 **A. Class Action**

5 Generally, “questions whether a [class action] settlement was fair and reasonable,
6 whether notice to the class was adequate, whether certification of the class was proper, and
7 whether the attorney fee award was proper are matters addressed to the trial court’s broad
8 discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),
9 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th
10 260.)

11 In determining whether a class settlement is fair, adequate and reasonable, the
12 trial court should consider relevant factors, such as the strength of plaintiffs’ case,
13 the risk, expense, complexity and likely duration of further litigation, the risk of
14 maintaining class action status through trial, the amount offered in settlement, the
15 extent of discovery completed and the stage of the proceedings, the experience
16 and views of counsel, the presence of a governmental participant, and the reaction
17 of the class members to the proposed settlement.

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

19 In general, the most important factor is the strength of the plaintiffs’ case on the merits,
20 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)
21 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and
22 weighing of relevant factors, depending on the circumstances of each case. (*Wershba, supra*, 91
23 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the
24 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
25 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
26 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation
27 marks omitted.) The trial court also must independently confirm that “the consideration being
28 received for the release of the class members’ claims is reasonable in light of the strengths and

1 weaknesses of the claims and the risks of the particular litigation.” (*Kullar, supra*, 168
2 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be
3 “provided with basic information about the nature and magnitude of the claims in question and
4 the basis for concluding that the consideration being paid for the release of those claims
5 represents a reasonable compromise.” (*Id.* at pp. 130, 133.)

6 **B. PAGA**

7 Labor Code section 2699, subdivision (l)(2) provides that “[t]he superior court shall
8 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s
9 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*
10 *Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA
11 go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-
12 five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC*
13 (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v.*
14 *Moriana* (2022) ___ U.S. ___, 2022 U.S. LEXIS 2940.)

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

25 The settlement must be reasonable in light of the potential verdict value. (See *O’Connor,*
26 *supra*, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential
27 verdict].) But a permissible settlement may be substantially discounted, given that courts often
28 exercise their discretion to award PAGA penalties below the statutory maximum even where a

claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL 5907869, at *8–9.)

II. TERMS AND ADMINISTRATION OF SETTLEMENT

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

The net settlement will be allocated to settlement class members proportionally based on their workweeks during the class period. Class members will not be required to submit a claim to receive their payments. For tax purposes, settlement payments will be allocated 10 percent to wages and 90 percent to penalties and interest, with 100 percent of the PAGA payments allocated to penalties. The employer’s share of taxes will be paid separately from the gross settlement. Funds associated with checks uncashed after 180 days will be transmitted to Legal Aid at Work.

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

The notice process has now been completed. There were no objections to the settlement or requests for exclusion from the class. Of the 1,565 notices mailed by the administrator, 21 were re-mailed to updated addresses and only 6 were ultimately undeliverable.¹ The

¹ In addition, the administrator explains that 35 notices were mailed to addresses that had been mismatched with the wrong class member’s name. Corrected notices were mailed to the impacted individuals on November 14, 2022, and the response deadline was extended to December 29, 2022 for these individuals.

1 administrator estimates that the average payment to class members will be \$442.72, with a high
2 payment of \$786.20 (excluding PAGA payments).

3 At preliminary approval, the Court found that the settlement is a fair and reasonable
4 compromise of the class claims and that the PAGA allocation is genuine, meaningful, and
5 reasonable in light of the statute's purposes. It finds no reason to deviate from these findings
6 now, especially considering that there are no objections. The Court is thus inclined to find that
7 the settlement is fair and reasonable for purposes of final approval.

8 **III. ATTORNEY FEES, COSTS, AND INCENTIVE AWARD**

9 Plaintiff seeks a fee award of \$381,666.67, one-third of the gross settlement, which is not
10 an uncommon contingency fee allocation in a wage and hour class action. This award is facially
11 reasonable under the "common fund" doctrine, which allows a party recovering a fund for the
12 benefit of others to recover attorney fees from the fund itself. Plaintiff also provides a lodestar
13 figure of \$179,117.50, based on 267.8 hours spent on the case by counsel billing at \$500–750 per
14 hour. Plaintiff's request results in a reasonable multiplier of 2.13. The lodestar cross-check
15 supports the percentage fee requested, particularly given the lack of objections to the attorney fee
16 request. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504 [trial court
17 did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked
18 against a lodestar resulting in a multiplier of 2.03 to 2.13].)²

19 Plaintiff's counsel also request \$8,221.12 in litigation costs. Plaintiff's costs appear
20 reasonable based on the summaries provided and are approved. The \$12,250 in administrative
21 costs are also approved.

22 Finally, the named plaintiff seeks an incentive award of \$10,000. To support his request,
23 he submitted a declaration describing his efforts on the case at preliminary approval. The Court
24 has reviewed this declaration, the individual settlement agreement lodged by Plaintiff on
25 December 19, 2022, and the supplemental declaration filed by Plaintiff's counsel on January 5,
26 2023. Having considered all of these submissions, the Court believes Plaintiff has been

27
28 ² Plaintiff has agreed to a fee-sharing arrangement, with Fitzpatrick & Swanston receiving 40%
of the fee awarded and Diversity Law Group, P.C. receiving 60%.

adequately compensated by his individual settlement and does not approve an additional incentive award to Plaintiff. The \$10,000 requested shall instead be distributed to the class.

IV. ORDER AND JUDGMENT

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

The motion for final approval is GRANTED. The following class is certified for settlement purposes:

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.

No one otherwise included in that definition is excluded from the class.

Judgment shall be entered through the filing of this order and judgment. (Code Civ. Proc., § 668.5.) Plaintiff and the members of the class shall take from their complaint only the relief set forth in the settlement agreement and this order and judgment. Pursuant to Rule 3.769(h) of the California Rules of Court, the Court retains jurisdiction over the parties to enforce the terms of the settlement agreement and the final order and judgment.

The Court sets a compliance hearing for **August 17, 2023 at 2:30 P.M.** in Department 1. At least ten court days before the hearing, class counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein; the number and value of any uncashed checks; amounts remitted to the *cy pres* recipient; the status of any unresolved issues; and any other matters appropriate to bring to the Court's attention. Counsel shall also submit an amended judgment as described in Code of Civil Procedure section 384, subdivision (b). Counsel may appear at the compliance hearing remotely.

IT IS SO ORDERED.

Date: January 13, 2023



The Honorable Sunil R. Kulkarni
Judge of the Superior Court