

FILED
Superior Court of California
County of Los Angeles

MAY 17 2023

David W. Stayton, Executive Officer/Clerk of Court
By: N. Navarro, Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

JOEL PASNO, JOHN KUNTZ, and
RODELLA HURTADO, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

HIBU INC., a Delaware Corporation,

Defendants.

Case No.: 22STCV01361

**ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: May 17, 2023
Time: 9:00 a.m.
Dept.: SSC-17

I. BACKGROUND

Plaintiffs Joel Pasno, John Kuntz, and Rodella Hurtado sue their former employer, Defendant Hibu Inc., for alleged wage and hour violations. Defendant provides digital marketing services to businesses throughout the United States. Plaintiffs seek to represent a class of Defendant's current and former non-exempt employees.

1 On January 12, 2022, Plaintiffs filed a class action complaint alleging causes of
2 action for: (1) Failure to Reimburse Business Expenses (Labor Code § 2802); (2)
3 Failure to Pay Overtime Wages (Labor Code §§ 510, 1194; IWC Wage Order No. 4-
4 2001, § 3); (3) Failure to Pay Compensation Due Upon Discharge from Employment
5 (Labor Code §§ 201-203); (4) Failure to Issue Accurate Itemized Wage Statements
6 (Labor Code § 226(a),(e)); and (5) Unfair, Unlawful, or Fraudulent Business Practices
7 (Bus. & Prof. Code §§ 17200 et seq.). On April 12, 2022, Plaintiffs filed a First
8 Amended Complaint to add a cause of action for civil penalties under the Private
9 Attorneys General Act (Labor Code § 2699) (“PAGA”).

10 On September 14, 2022, the parties participated in a mediation session with the
11 Hon. Brian C. Walsh, which resulted in settlement. The terms were finalized in the
12 Class and PAGA Action Settlement Agreement, a copy of which was filed with the
13 Court.

14 On March 22, 2023, the Court issued a “checklist” to the parties listing
15 deficiencies with the proposed settlement. On March 23, 2023, the Court called the
16 matter of Plaintiff’s motion for preliminary approval of settlement for hearing and
17 discussed the issues set forth in the Court’s checklist with counsel. In response, the
18 parties filed further briefing, including the Amended Class and PAGA Action
19 Settlement Agreement (“Settlement Agreement”) attached as Exhibit 1 to the
20 Supplemental Declaration of Julian Hammond filed April 25, 2023. All references
21 below are to that agreement.

22 Now before the Court is Plaintiffs’ motion for preliminary approval of the
23 settlement. For the reasons set forth below, the Court preliminarily grants approval for
24 the settlement.

1 **II. THE TERMS OF THE SETTLEMENT**

2 **A. SETTLEMENT CLASS AND RELATED DEFINITIONS**

3 “Class Members” refer to all persons who were employed by Defendant in
4 California as Account Representatives, Account Executives, Digital Account
5 Executives, or other non-management sales representatives at any time during the Class
6 Period, other than persons so employed who previously executed general releases of
7 claims in favor of Defendant. (§1.5)

8 “Class Period” means January 12, 2018 through December 13, 2022. (§1.4)

9 “Aggrieved Employees” are Class Members who worked for Defendant at any
10 time during the PAGA Period. (§1.2)

11 “PAGA Period” means the period from October 26, 2020 to December 13, 2022.
12 (§1.14)

13 “Settlement Class Member” refers to a Class Member who does not request
14 exclusion from the Settlement. (§1.21)

15
16 **B. THE MONETARY TERMS OF SETTLEMENT**

17 The essential monetary terms are as follows:

- 18 ● The Gross Settlement Amount (“GSA”) is **\$140,000** (§1.11). This includes
19 payment of a PAGA penalty of **\$5,000** to be paid 75% to the LWDA (\$3,750)
20 and 25% to the Aggrieved Employees (\$1,250) (§8).
 - 21 ○ Escalator Clause: If the total number of Class Members as of July 31,
22 2022 exceeded 133 by more than 5% (i.e., 140 or more Class Members),
23 then the GSA shall increase by an amount equal to the GSA multiplied by
24 a fraction, the numerator of which is the number of Class Members as of
25 July 31, 2022 in excess of 139, and the denominator of which is 139. For

1 example, if the number of Class Members as of July 31, 2022 is 142, the
2 increase in the Gross Settlement Value will be \$3,021.58 (\$140,000 x
3 3/139). It is understood and agreed that there shall be no increase in the
4 GSA as a result of the addition of Class Members who were hired by
5 Defendant from August 1, 2022 through the end of the Settlement Period.
6 (¶26)

- 7 • The Net Settlement Amount (“Net” or “NSA”) (**\$56,333.33**) is the GSA less:
 - 8 ○ Up to **\$46,666.67** (33 1/3%) for attorney fees (¶6);
 - 9 ○ Up to **\$15,000** for attorney costs (*Ibid.*);
 - 10 ○ Up to **\$10,000 total** [\$5,000 to Plaintiff Kuntz; \$2,500 each to Plaintiffs
11 Hurtado and Pasno] for service awards to the proposed class
12 representatives (¶7);
 - 13 ■ \$500 of each service award to Plaintiffs shall be allocated and paid
14 to each Plaintiff as consideration supporting their respective
15 Individual Settlement Agreement and General Release of Claims
16 (“Individual Release Agreements”) signed on September 16, 2022
17 (by Plaintiff Joel Pasno) and September 19, 2022 (by John Kuntz
18 and Rodella Hurtado). (¶1.18) Plaintiffs’ Individual Release
19 Agreements shall be enforceable even if the Court awards no
20 Enhancement/Service Award whatsoever to one or more of them
21 or a lesser amount than requested by Plaintiffs, and Plaintiffs
22 hereby waive all rights to challenge the enforceability of their
23 respective Individual Release Agreements. (¶7)
 - 24 ○ Estimated **\$7,000** for settlement administration costs (¶9).

- 1 • Defendant will separately pay the employer share of withholding taxes in
2 addition to the GSA (§10.1.4).
- 3 • Assuming the Court approves all maximum requested deductions, approximately
4 \$56,333.33 will be available for automatic distribution to participating class
5 members. Assuming full participation, the average settlement share will be
6 approximately \$423.55. ($\$56,333.33 \text{ Net} \div 133 \text{ class members} = \423.55). In
7 addition, each Aggrieved Employee will receive a portion of the PAGA penalty,
8 estimated to be \$18.11 per Aggrieved Employee. ($\$1,250 \text{ or } 25\% \text{ of } \$5,000$
9 $\text{PAGA penalty} \div 69 \text{ Aggrieved Employees} = \18.11).
- 10 • There is no Claim Requirement (Notice p. 2).
- 11 • The settlement is not reversionary (§5).
- 12 • Individual Settlement Share Calculation: The NSA shall be paid pro rata to the
13 Settlement Class Members based on the number of workweeks that each
14 Settlement Class Member worked during the Class Period. (§10.1) If a Class
15 Member timely and validly submits a Request for Exclusion, their share, less
16 their share of PAGA Penalties, will return to the NSA and will be distributed to
17 the remaining Settlement Class Members. (§10.1.1)
- 18 • PAGA Payment Calculation: 25% of the PAGA Penalties (\$1,250) shall be paid
19 to Aggrieved Employees pro rata based on the number weeks worked by them
20 during the PAGA Period. Aggrieved Employees will receive their share of the
21 PAGA Penalties regardless of whether not they exclude themselves from the
22 Settlement. (§8)
- 23 • Tax Withholdings: 10% of the NSA shall be allocated as wages and reported on
24 IRS Form W-2. 90% of the NSA will be allocated to non-wage payments,
25

1 penalties and interest and reported on IRS Form 1099. (¶10.1.2) 100% of the
2 PAGA Penalties shall be allocated to civil penalties. (¶10.1.3)

- 3 • **Funding of Settlement:** Within 15 business days of the Effective Date, Defendant
4 shall advance the Gross Settlement Amount, and employer's share of payroll tax,
5 to the Settlement Administrator. (¶5)
- 6 • **Distribution:** Within 30 business days of the Effective Date, the Settlement
7 Administrator will calculate and distribute the Settlement Payments and other
8 amounts to be paid under this Settlement Agreement. (¶5)
- 9 • **Uncashed Settlement Payment Checks:** Settlement Checks that are not cashed
10 within one hundred and eighty (180) days from the date of issuance by the
11 Settlement Administrator will be voided and the funds will be donated and
12 distributed to Bet Tzedek as the cy pres in accordance with California Code of
13 Civil Procedure § 384. (¶15) All parties and their counsel represent that they
14 have no interest or involvement with Bet Tzedek. (Supp. Decl. of Julian
15 Hammond ¶V; Supp. Decl. of Rodella Hurtado ¶2; Supp. Decl. of John Kuntz
16 ¶2; Supp. Decl. of Joel Pasno ¶2; Supp. Decl. of Angela Corcoran ¶3; Decl. of
17 Geoffrey C. Westbrook ¶3.)

18 19 **C. TERMS OF RELEASES**

- 20 • **Released Claims:** Effective on the date that Defendant fully funds the Gross
21 Settlement Amount, all Settlement Class Members shall be deemed to have fully
22 released the Released Parties from any and all claims, debts, liabilities, demands,
23 obligations, penalties, guarantees, costs, expenses, attorney's fees, damages,
24 action or causes of action, whether known or unknown, that were alleged or that
25 reasonably could have been alleged based on the facts alleged in the First

1 Amended Complaint, including, but not limited to, any claims for the failure to
2 reimburse business expenses (Labor Code § 2802), the failure to pay wages and
3 overtime wages (Labor Code §§ 510 and 1194), the failure to timely and fully
4 pay all wages due at termination (Labor Code §§ 201- 203), the failure to
5 provide accurate and timely pay statements (Labor Code §§ 226(a) and (e)), and
6 claims under the applicable Wage Order, as well as claims under Business and
7 Professions Code §§ 17200 et seq., based on alleged violations of these Labor
8 Code provisions and arising during the Class Period. Settlement Class Members
9 do not release any other claims, including claims for vested benefits, wrongful
10 termination, violation of the Fair Employment and Housing Act, unemployment
11 insurance, disability, social security, workers' compensation, or claims based on
12 facts occurring outside the Class Period (the "Released Claims"). (¶18)

- 13 • PAGA Released Claims: Effective on the date that Defendant fully funds the
14 Gross Settlement Amount, all Aggrieved Employees, whether or not they
15 exclude themselves from the Settlement, shall be deemed to have fully released
16 the Released Parties for all claims for civil penalties under Labor Code § 2699
17 that were alleged or that reasonably could have been alleged based on the facts
18 alleged in the First Amended Complaint and in Plaintiffs' January 26, 2022
19 PAGA Notice, including claims under Labor Code §§ 201, 202, 226(a), 510,
20 2802, and IWC Wage Order No. 4-2001, § 3 (the "PAGA Released Claims").
21 (¶19)
- 22 • Effect of the Released Claims and PAGA Released Claims on *Lori Cruz v. Hibu,*
23 *Inc.*: As noted in Sections 18 and 19, the Released Claims and the PAGA
24 Released Claims apply to, cover and extinguish claims asserted in the First
25 Amended Complaint under Labor Code §§ 201, 202, 203, 226(a) and (e), 510,

1 1194, and 2699, and claims under the applicable Wage Order, and the alleged
2 failure to pay wages and overtime wages and related claims, all relating to work
3 performed during the first three weeks of employment (initial sales training), as
4 well as claims under Labor Code § 2802 and Business and Professions Code §§
5 17200 et seq. for the alleged failure to reimburse business expenses within the
6 Class Period. The Released Claims and PAGA Released Claims also apply to,
7 cover and extinguish claims asserted under the same Labor Code provisions in a
8 separate lawsuit brought by Lori Cruz, on behalf of herself and a putative class
9 in *Lori Cruz v. Hibu Inc.*, United States District Court for the Eastern District of
10 California, Case No. 2:22-cv-00959, only for wages and overtime wages, the pay
11 statements relating to wages and overtime wages paid and/or allegedly not paid,
12 and the associated claims for statutory penalties (including, but not limited to,
13 waiting time penalties for the alleged non-payment or late payment of final
14 wages and wage statement penalties), civil penalties, and unfair business
15 practices, in each case relating to work performed during the initial three weeks
16 of employment (initial sales training) within the Class Period and the PAGA
17 Period. The PAGA Released Claims also apply to, cover and extinguish PAGA
18 civil penalties arising from work performed during the first three weeks of
19 employment (initial sales training) and from Defendant's alleged failure during
20 the PAGA Period to reimburse business expenses in violation of Labor Code §
21 2802. The Released Claims and PAGA Released Claims do not otherwise
22 release the claims in the *Cruz* action. Each Settlement Class Member's check
23 will include the following language on the back: *Signing or negotiating this*
24 *check (1) releases all claims made against the Defendant in Pasno, et al. v. Hibu*
25 *Inc., Los Angeles County Superior Court Case No. 22STCV01361; and (2)*

1 *releases the claims asserted in Lori Cruz v. Hibu, Inc., United States District*
2 *Court for the Eastern District of California, Case No. 2:22-cv-00959, relating to*
3 *the first three weeks of your employment (initial sales training) with Defendant*
4 *and PAGA Penalties related to work performed during the first three weeks of*
5 *employment and to Hibu's alleged failure to reimburse business expenses. (¶20)*

- 6 • “Released Parties” include Defendant and its present and former parents,
7 subsidiaries, affiliates, and joint ventures, and its and their shareholders, owners,
8 officers, directors, non-Class Member employees, agents, servants, registered
9 representatives, attorneys, insurers, successors, contractors, vendors, agencies,
10 staffing agencies, and assigns, and any other persons acting by, through, under,
11 or in concert with any of them. (¶1.15)
- 12 • The named Plaintiffs will also provide a general release and a waiver of the
13 protections of Cal. Civ. Code §1542. (¶21)
- 14 • The releases are effective on the date when Defendant fully funds the entire
15 Gross Settlement Amount, which will occur within 15 business days of the
16 Effective Date. (¶5)

17 18 **D. SETTLEMENT ADMINISTRATION**

- 19 • The proposed Settlement Administrator is Phoenix Class Action Administration
20 Solutions (¶1.19), which has provided evidence that no counsel are affiliated with
21 it and that it has adequate procedures in place to safeguard the data and funds to be
22 entrusted to it. (See Declaration of Michael Moore.)
- 23 • Settlement administration costs are estimated to be \$7,000 (¶9).
- 24 • Notice: The manner of giving notice is described below.

- 1 • Opt Out/Objection Dates: “Response Deadline” is 45 days calendar days after the
2 date that the Class Notice is initially mailed to Class Members. (¶1.17) It applies
3 to the submission of Requests for Exclusion (¶12.1), written objections (¶13), and
4 workweek disputes (¶14). Class Members whose Class Notice was undeliverable,
5 and is re-mailed, will have an additional 14 calendar days to respond to the re-
6 mailed Class Notice. (¶11.1.4)
 - 7 ○ Class Members who opt out of the Settlement will receive their share of the
8 PAGA Penalties, and will be bound by the release of PAGA claims.
9 (¶10.1.1)
 - 10 ○ Defendant will retain the right, in the exercise of its sole discretion, to
11 nullify the Settlement within 15 business days after expiration of the
12 Response Deadline if 13 or more of the Class Members request exclusion
13 from the Class. (¶27)
- 14 • Notice of Final Judgment will be posted on the Settlement Administrator’s website
15 (Notice p. 7).

17 **III. SETTLEMENT STANDARDS AND PROCEDURE**

18 California Rules of Court, rule 3.769(a) provides: “A settlement or compromise
19 of an entire class action, or of a cause of action in a class action, or as to a party,
20 requires the approval of the court after hearing.” “Any party to a settlement agreement
21 may serve and file a written notice of motion for preliminary approval of the settlement.
22 The settlement agreement and proposed notice to class members must be filed with the
23 motion, and the proposed order must be lodged with the motion.” See Cal. Rules of
24 Court, rule 3.769(c).
25

1 “In a class action lawsuit, the court undertakes the responsibility to assess
2 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or
3 dismissal of a class action. The purpose of the requirement [of court review] is the
4 protection of those class members, including the named plaintiffs, whose rights may not
5 have been given due regard by the negotiating parties.” *Consumer Advocacy Group,*
6 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal
7 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
8 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)
9 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement
10 agreement to the extent necessary to reach a reasoned judgment that the agreement is
11 not the product of fraud or overreaching by, or collusion between, the negotiating
12 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
13 concerned.”] [internal quotation marks omitted].

14 “The burden is on the proponent of the settlement to show that it is fair and
15 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
16 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
17 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
18 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
19 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

20 Notwithstanding an initial presumption of fairness, “the court should not give
21 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
22 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
23 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*
24 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
25 members, the court must independently and objectively analyze the evidence and

1 circumstances before it in order to determine whether the settlement is in the best
2 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
3 In that determination, the court should consider factors such as “the strength of
4 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
5 the risk of maintaining class action status through trial, the amount offered in
6 settlement, the extent of discovery completed and stage of the proceedings, the
7 experience and views of counsel, the presence of a governmental participant, and the
8 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
9 factors is not exclusive and the court is free to engage in a balancing and weighing of
10 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
11 245.

12 At the same time, “[a] settlement need not obtain 100 percent of the damages
13 sought in order to be fair and reasonable. Compromise is inherent and necessary in the
14 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is
15 substantially narrower than it would be if the suits were to be successfully litigated,’
16 this is no bar to a class settlement because ‘the public interest may indeed be served by
17 a voluntary settlement in which each side gives ground in the interest of avoiding
18 litigation.’” *Id.* at 250.

19 20 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

21 22 **A. THERE IS A PRESUMPTION OF FAIRNESS**

23 The settlement is entitled to a presumption of fairness for the following reasons:

24 //

25 //

1 **1. The settlement was reached through arm’s-length bargaining**

2 On September 14, 2022, the parties participated in a mediation session with the
3 Hon. Brian C. Walsh, which resulted in settlement. (Declaration of Julian Hammond
4 filed December 5, 2022 (“Hammond Decl.”) ¶13.)

5
6 **2. The investigation and discovery were sufficient**

7 Class Counsel represents that after the complaint was filed, the parties agreed to
8 engage in informal discovery and attend mediation. Defendant produced data and
9 documents as part of informal discovery including: (a) dates of employment for each
10 Class Member from the start of the Class Period through to July 31, 2022, including
11 start date, end date, leaves of absences (if any); (b) training dates for each Class
12 Member who completed an initial sales training during the Class Period, and whether
13 the training was in-person or virtual; (c) expense reimbursement policies in effect
14 during the Class Period; and (d) Plaintiffs’ personnel files. (*Id.* at ¶11.) Plaintiffs’
15 Counsel also conducted their own investigation, including discussions with each
16 Plaintiff, and analyzed the data produced by Defendant to calculate the data points
17 necessary to thoroughly evaluate their class claims, including the class size, the number
18 of weeks worked by the Class, and number of weeks Class Members spent attending
19 trainings, and extrapolated these data points out to the end of 2022. (*Ibid.*)

20 This is sufficient to value the case for settlement purposes.

21
22 **3. Counsel is experienced in similar litigation**

23 Class Counsel represent that they are experienced in class action litigation,
24 including wage and hour class actions. (*Id.* at ¶6, Exhibit 1.)
25

1 **4. Percentage of the class objecting**

2 This cannot be determined until the final fairness hearing. Weil & Brown et al.,
3 Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 [“Should
4 the court receive objections to the proposed settlement, it will consider and either sustain
5 or overrule them at the fairness hearing.”].

6
7 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED**
8 **FAIR, ADEQUATE, AND REASONABLE**

9 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
10 entirety. The evaluation of any settlement requires factoring unknowns. “As the court
11 does when it approves a settlement as in good faith under Code of Civil Procedure
12 section 877.6, the court must at least satisfy itself that the class settlement is within the
13 ‘ballpark’ of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)
14 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to
15 consider and weigh the nature of the claim, the possible defenses, the situation of the
16 parties, and *the exercise of business judgment* in determining whether the proposed
17 settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p.
18 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).

19
20 **1. Amount Offered in Settlement**

21 The most important factor is the strength of the case for plaintiffs on the merits,
22 balanced against the amount offered in settlement.” (*Id.* at 130.)

23 Class Counsel estimated Defendant’s maximum exposure at \$894,051 and realistic
24 exposure at \$292,062, based on the following analysis:
25

Violation	Maximum Exposure	Realistic Exposure
Reimbursement Claim	\$352,549.00	\$88,137.00
Unpaid Overtime Claim	\$60,968.00	\$15,242.00
Wage Statement Claim	\$6,900.00	\$1,725.00
Waiting Time Penalties	\$382,234.00	\$95,558.00
PAGA Penalties	\$91,400.00	\$91,400.00
Total	\$894,051.00	\$292,062.00

(Hammond Decl. ¶¶14-42.)

Class Counsel obtained a gross settlement valued at \$140,000. This is approximately 15.6% of Defendant's maximum exposure and 47.9% of Defendant's realistic exposure.

2. The Risks of Future Litigation

The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members. Even if a class is certified, there is always a risk of decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 [“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.”].) Further, the settlement was negotiated and endorsed by Class Counsel who, as indicated above, are experienced in class action litigation. Based upon their investigation and analysis, the attorneys representing Plaintiffs and the class are of the opinion that this settlement is fair, reasonable, and adequate. (Hammond Decl. ¶44.)

1 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,
2 which was sent a copy of the Amended Settlement Agreement on April 25, 2023 and has
3 not yet objected. (See Proof of Service on the LWDA filed April 25, 2023.) Any
4 objection by it will be considered at the final fairness hearing.

5
6 **3. The Releases Are Limited**

7 The Court has reviewed the Releases to be given by the absent class members and
8 the named plaintiffs. The releases, described above, are tailored to the pleadings and
9 release only those claims in the pleadings. There is no general release by the absent
10 class. The named plaintiffs' general releases are appropriate given that each was
11 represented by counsel in its negotiation.

12
13 **4. Conclusion**

14 Class Counsel estimated Defendant's maximum exposure at \$894,051 and realistic
15 exposure at \$292,062. Class Counsel obtained a gross settlement valued at \$140,000.
16 This is approximately 15.6% of Defendant's maximum exposure and 47.9% of
17 Defendant's realistic exposure, which, given the uncertain outcomes, including the
18 potential that the class might not be certified, that liability is a contested issue, and that
19 the full amount of penalties would not necessarily be assessed even if the class is certified
20 and liability found, the settlement is within the "ballpark of reasonableness."

21
22 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

23 A detailed analysis of the elements required for class certification is not required,
24 but it is advisable to review each element when a class is being conditionally certified.

25 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party

1 advocating class treatment must demonstrate the existence of an ascertainable and
2 sufficiently numerous class, a well-defined community of interest, and substantial
3 benefits from certification that render proceeding as a class superior to the alternatives.”

4 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

5 **1. The Proposed Class is Numerous**

6 There are approximately 133 putative Class Members. (Memo ISO Prelim at
7 6:3-5.) Numerosity is established. *Franchise Tax Bd. Limited Liability Corp. Tax*
8 *Refund Cases* (2018) 25 Cal.App.5th 369, 393: stating that the “*requirement that there*
9 *be many parties to a class action is liberally construed,*” and citing examples wherein
10 classes of as little as 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28,
11 *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, were upheld).

12 **2. The Proposed Class Is Ascertainable**

13 “A class is ascertainable, as would support certification under statute
14 governing class actions generally, when it is defined in terms of objective
15 characteristics and common transactional facts that make the ultimate identification
16 of class members possible when that identification becomes necessary.” *Noel v. Thrifty*
17 *Payless, Inc.* (2019) 7 Cal.5th 955, 961 (*Noel*).

18 The class is defined above. Class Members are ascertainable through
19 Defendant’s records. (Memo ISO Prelim at 2-3.)

20 **3. There Is A Community of Interest**

21 “The community of interest requirement involves three factors: ‘(1) predominant
22 common questions of law or fact; (2) class representatives with claims or defenses typical
23 of the class; and (3) class representatives who can adequately represent the class.’”

24 *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

1 As to predominant questions of law or fact, Plaintiffs challenge Defendant's
2 policies that raise predominant common questions of law and fact including whether
3 Defendant reimbursed business expenses necessarily incurred by Class Members,
4 whether CMs were required to work overtime, and whether Hibu issued inaccurate wage
5 statements and failed to pay all wages at the time of discharge. (Memo ISO Prelim at
6 6:13-20.)

7 As to typicality, Plaintiffs contend that their claims are typical of the Class that
8 they seek to represent because they were subject to the same compensation and expense
9 reimbursement policies and practices, suffered the same types of injury, and seek the
10 same types of relief, as the putative Class. (Memo ISO Prelim at 6:21-24.)

11 As to adequacy, each Plaintiff represents that he or she is aware of the duties of
12 serving as class representative and does not have conflicts of interest with the class.
13 (Decl. of Rodella Hurtado ¶¶4-5; Decl. of John Kuntz ¶¶4-5; Decl. of Joel Pasno ¶¶4-5.)
14 As previously stated, Class Counsel have experience in class action litigation.

15 **4. Substantial Benefits Exist**

16
17 Given the relatively small size of the individual claims, a class action is superior to
18 separate actions by the class members.

19 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS** 20 **OF DUE PROCESS**

21
22 The purpose of notice is to provide due process to absent class members. A practical
23 approach is required, in which the circumstances of the case determine what forms of
24 notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California
25 Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the

1 court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the
2 stake of the individual class members; (4) the cost of notifying class members; (5) the
3 resources of the parties; (6) the possible prejudice to class members who do not receive
4 notice; and (7) the res judicata effect on class members.

5 **1. Method of class notice**

6 Within 10 calendar days of the order granting preliminary approval of the
7 Settlement, Defendant shall provide the Settlement Administrator with the Class Data
8 List. (¶11.1.1) Upon its receipt of the Class Data List, the Settlement Administrator
9 shall access the National Change of Address (“NCOA”) Database, and update the
10 addresses contained therein. (¶11.1.2)

11 Within 30 days of the Preliminary Approval Order, the Settlement Administrator
12 shall provide the Class Notice by bulk first class mail, forwarding requested, to the
13 Class Members at the addresses identified through the process described above.
14 (¶11.1.3)

15 The deadline for the administrator to re-mail any returned notices is 14 calendar
16 days. (Supp. Hammond Decl. at 3:3-4.) As to any Class Notices that are returned as
17 undeliverable, or where the NCOA Database indicates that the last known address of
18 any Class Member is invalid or otherwise undeliverable, the Settlement Administrator
19 will perform a skip trace procedure and re-mail all returned, undelivered mail as soon as
20 practicable. Such Class Members whose Class Notice was undeliverable, and is re-
21 mailed, will have an additional 14 calendar days to respond to the re-mailed Class
22 Notice. The Administrator will inform the Class Member of the extended deadline with
23 the re-mailed Class Notice. (¶11.1.4)

24 //

25 //

1 **2. Content of class notice.**

2 A copy of the proposed class notice is attached to the Settlement Agreement.
3 The notice includes information such as: a summary of the litigation; the nature of the
4 settlement; the terms of the settlement agreement; the maximum deductions to be made
5 from the gross settlement amount (i.e., attorney fees and costs, the enhancement award,
6 and claims administration costs); the procedures and deadlines for participating in,
7 opting out of, or objecting to, the settlement; the consequences of participating in,
8 opting out of, or objecting to, the settlement; and the date, time, and place of the final
9 approval hearing. See Cal Rules of Court, rule 3.766(d). It is to be given in English
10 only, as Defendant’s Vice President of Human Resources represents that all of its
11 employees were required to be fluent in English during the class period. (See Decl. of
12 Angela Corcoran filed March 16, 2023.)

13 **3. Settlement Administration Costs**

14 Settlement administration costs are estimated at **\$7,000**, including the cost of
15 notice (¶9). Prior to the time of the final fairness hearing, the settlement administrator
16 must submit a declaration attesting to the total costs incurred and anticipated to be
17 incurred to finalize the settlement for approval by the Court.

18
19 **E. ATTORNEY FEES AND COSTS**

20 California Rule of Court, rule 3.769(b) states: “Any agreement, express or
21 implied, that has been entered into with respect to the payment of attorney fees or the
22 submission of an application for the approval of attorney fees must be set forth in full in
23 any application for approval of the dismissal or settlement of an action that has been
24 certified as a class action.”

1 Ultimately, the award of attorney fees is made by the court at the fairness
2 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*
3 *v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*
4 (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122,
5 1132-1136. In common fund cases, the court may use the percentage method. If
6 sufficient information is provided a cross-check against the lodestar may be conducted.
7 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. Despite any
8 agreement by the parties to the contrary, “the court ha[s] an independent right and
9 responsibility to review the attorney fee provision of the settlement agreement and
10 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*
11 *Telephone Company* (2004) 118 Cal.App.4th 123, 128.

12 The question of class counsel’s entitlement to **\$46,666.67** (33 1/3%) in attorney
13 fees will be addressed at the final fairness hearing when class counsel brings a noticed
14 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
15 the court with current market tested hourly rate information and billing information so
16 that it can properly apply the lodestar method and must indicate what multiplier (if
17 applicable) is being sought.

18 Class counsel should also be prepared to justify the costs sought (capped at
19 **\$15,000**) by detailing how they were incurred.

20

21 **F. SERVICE AWARDS**

22 The Settlement Agreement provides for service awards of up to **\$10,000 total**
23 [**\$5,000 to Plaintiff Kuntz; \$2,500 each to Plaintiffs Hurtado and Pasno**] for the class
24 representatives (¶7). Trial courts should not sanction enhancement awards of thousands
25 of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours expended,

1 ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the form of
2 quantification of time and effort expended on the litigation, and in the form of reasoned
3 explanation of financial or other risks incurred by the named plaintiffs, is required in
4 order for the trial court to conclude that an enhancement was ‘necessary to induce [the
5 named plaintiff] to participate in the suit’” *Clark v. American Residential Services*
6 *LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in original.

7 The Court will decide the issue of the enhancement award at the time of final
8 approval.

9
10 **V. CONCLUSION AND ORDER**

11 The Court hereby:

12 (1) Grants preliminary approval of the settlement as fair, adequate, and
13 reasonable;

14 (2) Grants conditional class certification;

15 (3) Appoints Joel Pasno, John Kuntz, and Rodella Hurtado as Class
16 Representatives;

17 (4) Appoints HammondLaw, P.C. as Class Counsel;

18 (5) Appoints Phoenix Class Action Administration Solutions as Settlement
19 Administrator;

20 (6) Approves the proposed notice plan; and

21 (7) Approves the proposed schedule of settlement proceedings as follows:

- 22 • Preliminary approval hearing: May 17, 2023
- 23 • Deadline for Defendant to provide class list to settlement administrator: May 27,
24 2023 (within 10 calendar days from preliminary approval)

- 1 • Deadline for settlement administrator to mail notices: June 16, 2023 (within 30
- 2 calendar days from preliminary approval)
- 3 • Deadline for class members to opt out: July 31, 2023 (45 calendar days from the
- 4 initial mailing of the Notice Packets)
- 5 • Deadline for class members to object: July 31, 2023 (45 calendar days from the
- 6 initial mailing of the Notice Packets)
- 7 • Deadline for class counsel to file motion for final approval: August 23, 2023
- 8 (16 court days prior to final fairness hearing)
- 9 • Final fairness hearing: September 15, 2023, at 9:00 a.m.

10
11
12 Dated:

5/17/23



MAREN E. NELSON

Judge of the Superior Court