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12 *Attorneys for Plaintiffs and the Putative Class*

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

15 Plaintiffs,

16 vs.

17 **HIBU INC.**, a Delaware Corporation,

18 Defendant.

CASE NO. 22STCV01361

**DECLARATION OF JULIAN HAMMOND IN
SUPPORT OF PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT AND PLAINTIFFS'
MOTION FOR ATTORNEYS' FEES AND
COSTS, AND SERVICE AWARDS FOR
CLASS REPRESENTATIVES**

Date: September 15, 2023

Time: 9:00 a.m.

Dept. 17; Hon. Maren E. Nelson

1 I, Julian Hammond, declare as follows:

2 1. I am over the age of 18 and have personal knowledge of the facts set forth in this
3 declaration and could and would testify competently to them.

4 2. I am a member in good standing of the Bar of the State of California. I am licensed to
5 practice before all courts in the State of California.

6 3. I am the principal of my own law firm HammondLaw, P.C. (“HammondLaw” or “Class
7 Counsel”) and counsel for the named Plaintiffs Joel Pasno, John Kuntz, and Rodella Hurtado
8 (collectively, “Plaintiffs”) and approximately 142 (“Class Members” or “CMs”) who were employed
9 by Hibu Inc. (“Defendant” or “Hibu”) in California at any time during the period from January 12, 2018
10 through December 13, 2022 (“Class Period”) as Account Representatives, Account Executives, Digital
11 Account Executives, and other non-management sales representatives.

12 4. I submit this declaration in support of Plaintiffs’ Motion for Final Approval of Class
13 Action Settlement, and Motion for Approval of Attorneys’ Fees and Costs, and Service Awards for Class
14 Representatives.

15 **PERCENTAGE OF THE FUND ANALYSIS**

16 5. Class Counsel seek an attorneys’ fee award that is 33.33% of the \$140,000 Gross
17 Settlement (*i.e.*, \$46,666.67). This amount is reasonable considering Class Counsel’s extensive
18 experience in wage and hour class actions, the work done by Class Counsel on this case, the manner in
19 which Counsel effectuated this result to ensure prompt payment to the Class by negotiating a Settlement
20 less than a year of filing the lawsuit, the risk of non-recovery after substantial investment of time and
21 resources undertaken by Class Counsel, and the continued time and expense that Class Counsel will incur
22 by administering the fair distribution of the settlement fund should this Court grant approval.

23 6. Class Counsel’s fee request is justified in light of the fact that 1/3 of the common fund is
24 a percentage that California courts routinely award in common fund settlements. Class Counsel has been
25 awarded 33% or more of the common fund in numerous wage and hour class actions including *Harrold*
26 *v. California Family Health LLC*, Case No. 34-2022-00323409 (Sacramento County Superior Court,
27 August 17, 2023) (approving fees of 35% of \$223,000 PAGA representative action settlement); *Carr et*
28 *al. v. Konica Minolta Business Solutions U.S.A., Inc.*, Case No. 21CV001245 (Alameda County Superior
Court, June 27, 2023) (approving fees of 1/3 of \$1,247,907.53 wage and hour class settlement); *Castillo*
v. Holy Names University, Case No. HG21097245 (Alameda County Superior Court, May 2, 2023)
(approving fees of 1/3 of \$907,701 wage and hour class settlement); *Glor v iHeart Media +*
Entertainment, Case No. 22CV005286 (Alameda County Superior Court, February 14, 2023) (approving

1 fees of 1/3 of \$1,1220,000 wage and hour class settlement); *Cassidy v. Keyence Corporation of America*,
2 Case No. 21CV382350 (Santa Clara County Superior Court, February 8, 2023) (approving fees of a 1/3
3 of \$300,000 PAGA settlement); *Burleigh v. National University*, Case No. MSC21-00939 (Contra Costa
4 County Superior Court, Aug. 26, 2022) (approving fees of 40% of \$925,000 class settlement); *Costa v.*
5 *University of Antelope Valley*, Case No. 21STCV18531 (Los Angeles County Superior Court, August
6 23, 2022) (approving fees of a 1/3 of \$150,000 PAGA settlement); *Parsons v. La Sierra University*, Case
7 No. CVRI2000104 (Riverside County Superior Court, May 19, 2022) (approving fees of a 1/3 of
8 \$578,220 wage and hour class settlement); *Chindamo v. Chapman University*, Case No. 30-2020-
9 01147814-CU-OE-CXC (Orange County Superior Court, April 15, 2022) (approving fees of 1/3 of
10 \$1,150,000 wage and hour class settlement); *Sweetland-Gil v. University of the Pacific*, Case No. STK-
11 CV-UOE-2019-0014682 (San Joaquin County Superior Court, March 4, 2022) (approving fees of 1/3 of
12 \$1,800,000 wage and hour class settlement); *Senese v. University of San Diego*, Case No. 37-2019-
13 00047124-CU-OE-CTL (San Diego County Superior Court, February 8, 2022) (approving fees of 1/3 of
14 \$3,892,750 wage and hour class settlement); *Solis et al. v. Concordia University Irvine*, Case No. 30-
15 2019-01114998-CU-OE-CXC (Orange County Superior Court, February 3, 2022) (approving fees of 1/3
16 of a \$890,000 wage and hour class settlement); *McCoy et al. v. Legacy Education LLC*, Case No.
17 19STCV2792 (Los Angeles County Superior Court, November 15, 2021) (approving fees of 1/3 of a
18 \$76,000 wage and hour representative settlement); *Merlan v. Alliant International University*, Case No.
19 37-2019-00064053-CU- OE-CTL (San Diego County Superior Court, November 2, 2021) (approving
20 fees of 1/3 of a \$711,500 wage and hour class action as “not out of line with class action fee awards
21 calculated using the percentage-of-the-benefit method”); *Stupar et al. v University of La Verne*, Los
22 Angeles Superior Court, October 14, 2021) (approving fees of 33% in \$2,450,000 wage and hour class
23 settlement); *Normand v. Loyola Marymount University*, Case No. 19STCV17953 (Los Angeles Superior
24 Court, September 9, 2021) (approving fees of 33% in \$3,400,000 wage and hour class settlement); *Veal*
25 *v Point Loma Nazarene University*, Case No. 37-2019-00064165-CU-OE-CTL (San Diego Superior
26 Court, August 27, 2021)(approving fees of 33.33% in \$711,000 wage and hour class settlement); *Pillow*
27 *et al. v. Pepperdine University*, Case No. 19STCV33162 (Los Angeles County Superior Court., July 28,
28 2021) (approving fees of 33% in \$940,000 wage and hour class settlement); *Moore et al. v. Notre Dame*
De Namur University, Case No. 19-CIV-04765 (San Mateo County Superior Court July 1, 2021)
(approving fees of 33% in \$882,880 wage and hour class settlement); *Peng v. The President and Board*
of Trustees of Santa Clara College, Case No. 19CV348190 (Santa Clara County Superior Court., April
21, 2021) (approving fees of 33% in \$1,900,000 wage and hour class settlement); *Morse v. Fresno Pacific*

1 *University*, Case No. 19-CV-04350 (Merced County Superior Court, April 6, 2021) (approving fees of
2 33% in \$1,534,725 wage and hour class settlement); *Miner, et al. v. ITT Educational Services, Inc.*, Case
3 No. 3:16-cv-04827-VC (N.D. Cal., March 19, 2021) (approving fees of 33% in a \$5.2 million wage and
4 hour class settlement); *Granberry v. Azusa Pacific University*, Case No. 19STCV28949 (Los Angeles
5 County Superior Court, March 5, 2021) (approving fees of 33% in a \$1,112,100 wage and hour class
6 settlement); *Ott v. California Baptist University*, Case No. RIC1904830 (Riverside County Superior
7 Court, January 26, 2021) (33% fee award in \$700,000 wage and hour class settlement); *Pereltsvaig v.*
8 *Cartus Corp.*, Case No. 19CV348335 (Santa Clara County Superior Court, Jan. 13, 2021) (approving
9 fees of 1/3 in a \$300,000 wage and hour class settlement); *Pereltsvaig v. Leland Stanford Jr. University*,
10 Case No. 17-CV-311521 (Santa Clara County Superior Court, Jan. 4, 2019) (approving fee of 33% in
11 \$886,890 wage and hour class settlement); and other wage and hour class settlement.

12 7. In my professional experience, percentage-of-the-fund awards are frequently used as the
13 basis for awarding successful attorneys their fees in common fund settlements. My understanding is that
14 the courts' bases for favoring percentage-of-the-fund awards in common fund settlements include (1)
15 fairly compensating the attorneys based on the benefits brought to the class; (2) providing an incentive
16 for counsel to efficiently litigate cases, rather than spend excessive hours to prolong litigation and justify
17 a higher lodestar; (3) providing incentive for settlement, which is particularly preferred in class actions;
18 (4) equitably spreading the attorneys' fees among class members who benefit from their work at a rate
19 that closely mirrors percentages paid on individual contingency fees cases; and (5) relieving some of the
20 workload on an overtaxed judicial system while still providing fairness to the class through judicial
21 oversight of class settlements.

22 8. Class Counsel's fee request is justified under these factors. Class Counsel agreed to
23 represent Plaintiffs on behalf of themselves and the putative Class on a contingency basis, and further
24 agreed to advance all litigation costs. Class Counsel also took on this case despite the known risks
25 associated with Plaintiffs' claims and the Class allegations, including the risk that we would expend years
26 of labor and great expense only to have class certification partly or wholly denied, or that any claims
27 surviving to trial might ultimately fail at trial or be overturned on appeal. There were also the
28 unpredictable risks that are common to most complex employment class actions that develop only over
the course of the litigation, including the possibilities of changes or developments in the law and actions
by defendants or defense counsel. Despite all of this, Class Counsel were able to obtain a very favorable
settlement in a relatively short time after filing this lawsuit.

1 9. The requested percentage of the distribution is in line with (or lower than) the fee that my
2 firm would have expected if we had negotiated individual retainer agreements with each Class Member.
3 Such an award ensures that we can receive an appropriate fee for the risks undertaken by our firm and
4 the benefit conferred to the Class, particularly when it would be impossible *ex ante* to enter a fair fee
5 arrangement with all the members of the Class.

6 **LODESTAR-MULTIPLIER ANALYSIS**

7 10. Plaintiffs' Counsel has calculated its combined lodestar amount (reasonable hours times
8 reasonable hourly rates) to be \$133,965 through August 21, 2023. The lodestar amount represents
9 approximately 189 hours of work by attorneys billed at regular, established billing rates.

10 11. In this section of the declaration, I provide a summary of the general tasks performed by
11 Plaintiffs' Counsel at each stage of the litigation in order to assist the Court in evaluating the
12 reasonableness of the hours submitted by Plaintiffs. I have divided the time spent litigating this case into
13 four separate phases. Phase I consisted of pre-filing work including fact investigation and case analysis;
14 drafting pleadings; and matters related to case management conferences. Phase II consisted of discovery
15 (formal and informal) and preparation for mediation. Phase III consisted of attendance at mediation and
16 negotiations until the settlement agreement had been signed. Phase IV consisted of settlement-related
17 motions (preliminary and final approval) and notice administration.

18 **PHASE I WORK**

19 12. Phase I consisted of pre-filing fact investigation and case analysis, drafting of pleadings
20 throughout the litigation, and matters for case management conferences. The total time expended by
21 Plaintiffs' Counsel on these tasks was 31.2 hours for a lodestar of \$23,100, as follows:

22

	Hammond	Cherniak	Brandler	Total
Fact Investigation	1.9	0.1	4.1	6.1
Pleadings	1.7	4.2	11.4	17.3
Court Conferences	0.4	5.7	1.7	7.8
	4.0	10.0	17.2	31.2

23

24 13. "Fact Investigation" includes researching and analyzing Defendant's policies and relevant
25 law to determine the validity of Plaintiffs' claims prior to initiating the lawsuit; interviewing Plaintiffs
26 and reviewing the documents they provided; and corresponding with Plaintiffs via email and telephone
27 to obtain information necessary for the complaints.

1 14. "Pleadings" included drafting and/or reviewing drafts of the Complaint and First
2 Amended Complaint and drafting the PAGA Notice.

3 15. "Court Conference" includes drafting Case Management Conference Statements;
4 attending Conferences; corresponding with Defendant on conference dates; reviewing/discussing and
5 serving the court's Case Management Orders; and reviewing/ drafting emails, and statements and minute
6 orders related conferences.

7 **PHASE II WORK**

8 16. Phase II consisted of discovery and mediation preparation. The total time expended by
9 Plaintiffs' Counsel on these tasks was 41.2 hours for a lodestar of \$29,307, as follows:

	Hammond	Cherniak	Brandler	Total
Discovery / Data Analysis	1.5	7.1	0.7	9.3
Mediation Prep	6.2	22.3	3.4	31.9
TOTALS	7.7	29.4	4.1	41.2

12 17. The "Discovery and Data Analysis" work included drafting informal discovery requests
13 and responding to Defendant's informal discovery requests; and reviewing and analyzing the data and
14 documents Defendant produced including: (a) dates of employment for each Class Member from the start
15 of the Class Period through to July 31, 2022, including start date, end date, leaves of absences (if any);
16 (b) training dates for each Class Member who completed an initial sales training during the Class Period,
17 and whether the training was in-person or virtual; (c) expense reimbursement policies in effect during the
18 Class Period; and (d) Plaintiffs' personnel files. Based on this information, Plaintiffs prepared a detailed
19 damages analysis to better identify the range of settlement figures for the claims alleged.

20 18. The "Mediation Preparation" included drafting Plaintiffs' analysis of their class claims
21 and a detailed damages model based on data points including class size, unreimbursed expenses, average
22 overtime hours, average overtime rate, number of formerly employed Class Members and their average
23 daily rate, and the number of inaccurate wage statements issued to the Class; drafting Plaintiffs' detailed
24 mediation brief, and reviewing Defendant's mediation brief prior to the mediation.

25 **PHASE III WORK**

26 19. Phase III consisted of the mediation and settlement negotiations. The total time expended
27 by Plaintiffs' Counsel on these tasks 44.3 hours for a lodestar of \$32,402 as follows:

	Hammond	Cherniak	Brandler	Barnes	Total
Mediation Attendance	6.5	6.5	-	-	13.0
Post Mediation Settlement	3.9	21.1	1.6	4.7	31.3
	10.4	27.6	1.6	4.7	44.3

20. The “Mediation Attendance” included day-of preparation for the mediation and attending the mediation with Hon. Brian Walsh (Ret.) (via Zoom).

21. The “Post Mediation Settlement” work included negotiating the settlement structure, the escalator clause, the Release, timing of the funding, and other key terms; reviewing, editing and finalizing the long-form Settlement Agreement and Class Notice; and drafting an amended Settlement Agreement and Notice as directed by the Court.

PHASE IV WORK

22. Phase IV consisted of the obtaining approval of the Settlement and overseeing the administration of Notice to the Class. During this phase, Plaintiffs’ Counsel drafted a detailed preliminary approval motion and supporting declaration with an in-depth analysis of Plaintiffs’ claims, the underlying allegations, Defendant’s defenses, the strength of each defense, and maximum and realistic liability on each claim; attended two hearings on the Motion for Preliminary Approval; drafted a supplemental declaration addressing the Court’s concerns with the Settlement Agreement and supplemental declarations for named plaintiffs; drafted the final approval motion, fees motion, and the instant declaration; assisted the Settlement Administrator with drafting its declarations; reviewed the settlement calculations prior to mailing the Class Notice; and reviewed the weekly reports circulated by the Settlement Administrator. The total time expended by Plaintiffs’ Counsel on these tasks was 72.9 hours for a lodestar of \$49,155 as follows:

Hammond	Cherniak	Brandler	Barnes	Total
3.0	61.5	4.2	4.2	72.9

PLAINTIFFS’ COUNSEL’S REASONABLE HOURLY RATES

23. The following paragraphs summarize each attorney’s qualifications, some of their principal contributions to the case, and their hourly rate:

a. Julian Hammond

24. *Qualifications and Experience.* I have been practicing law since 2000. I was admitted as a Solicitor in New South Wales in 2000. In 2002, I was admitted to the New York State Bar, and in 2002

1 I was admitted as a Barrister in New South Wales. As a Barrister, from approximately 2002 to 2008, I
2 first-chaired four cases and second-chaired at least 10 cases. I also advised high profile institutional
3 clients and advised and represented individuals and groups of individuals in a wide variety of matters,
4 including pharmaceutical product liability, oil-spill, eminent domain and other real estate matters, and
5 breach of contract. Thereafter and for the majority of my career I have represented plaintiffs in
6 employment and consumer cases. From 2008 until 2010, I worked with Ackermann & Tilajef, P.C. in
7 Los Angeles, California where I worked with employees in a number of wage and hour class actions, as
8 well as small groups of clients in sexual discrimination, FMLA discrimination, retaliation and similar
9 cases.

10 25. In 2010 I founded my firm HL, P.C. Since the founding of my firm, I was the lead or co-
11 lead counsel in over 50 employment and consumer class actions in state and federal courts in California
12 and Washington state. I represented employees across a variety of industries, including outside
13 salespersons in the liquor distribution industry and in the photocopier distribution industry securing
14 settlements against major players in both industries for violations of Labor Code § 2802 and securing
15 significant increases in the amount of money they received for expense reimbursement. I also represented
16 thousands of truck drivers in California, securing settlements and compensation changes going forward
17 against the largest trucking companies in the United States for unpaid wages and premium pay. I have
18 also represented employees who have worked as pet groomers, fitness instructors, and most recently,
19 adjunct instructors.

20 26. My firm was also the first firm in the country to bring cases and secure settlements
21 pursuant to the Automatic Renewal Law § 17600 *et seq.* (“ARL”) and the UCL. As lead or co-lead
22 counsel we secured the largest settlement thus far under the ARL and UCL in *Siciliano, et al. v. Apple,*
23 *Inc.*, Case No. 1:13-CV-257676 (Cal. Super. Ct. Santa Clara Cnty., November 5, 2018) (\$16,500,000
24 settlement on behalf of approximately 4,000,000 consumers). We also secured settlements under the
25 ARL and the UCL in *Goldman v. Lifelock*, Case No. 1-15-cv-276235 (Cal. Super. Ct. Santa Clara Cnty.
26 Feb. 5, 2016) (\$2,500,000 settlement on behalf of approximately 320,000 consumers); *Davis v. Birchbox*
27 *Inc.*, Case No. 3:15-cv-498-BEN-BSG (S.D. Cal. Oct 17, 2016) (settlement in form of Birchbox credits
28 for approximately 150,000 consumers); *Kruger v. Kiwi Crate*, Case No. 1-13-CV-254550 (Cal. Super.
Ct. Santa Clara Cnty., July 2, 2015)) (claims made settlements on behalf of consumers); and *Gargir v.*
SeaWorld Inc., Case No. 37-2015-00008175-CU-MC-CTL (Cal. Sup. Ct. San Diego Cnty. October 21,
2016) (\$500,000 settlement on behalf of 88,000 subscribers).

1 27. My firm was also on the Executive Committee in the MDL case titled *In re Ashley*
2 *Madison Customer Data Security Breach Litigation*, Case No. MDL 2669 (E.D. Mis. Dec. 9, 2015)
3 (\$11.2 million claims-made settlement on behalf of approximately 39 million Ashley Madison users
4 alleging privacy violation); and is currently co-lead counsel in *In Re Betterhelp, Inc. Data Disclosure*
5 *Cases*, Case No. 23-cv-01033-RS (N.D. Cal. July 24, 2023)

6 28. *Billing Rate.* My current billing rate is \$925 per hour. Surveys I have reviewed and
7 experts I have consulted demonstrate to me that this rate is similar to the rates charged by comparable
8 attorneys for class action work and complex litigation.

9 29. *Significant Responsibilities on this Case.* As the principal of HammondLaw I managed
10 every aspect of the litigation. I supervised, edited, and /or approved pleadings, PAGA notices, discovery,
11 mediation brief, settlement negotiations, settlement agreement, and preliminary and final approval
12 motion. I was also the lead negotiator in the full-day mediation.

13 **b. Polina Brandler**

14 30. *Qualifications and Experience.* Ms. Brandler's practice has focused on wage and hour
15 and consumer class actions for over a decade. Ms. Brandler has been responsible for all facets of wage
16 and hour actions, from pre-filing investigation, discovery, and motion practice, settlement negotiations,
17 trial, appeal and/or settlement approval. She has been certified as class counsel in more than 45 class
18 actions, including numerous wage and hour cases. She was one of the primary attorneys litigating the
19 *Fisher v. MoneyGram* case, which, as discussed above, resulted in an important victory for consumers
20 on an arbitration issue. Ms. Brandler also second chaired the trial in this case. Prior to joining
21 HammondLaw, Ms. Brandler clerked for the Honorable Anita H. Dymant of the Appellate Division of
22 the Los Angeles Superior Court from 2009 to 2012. Ms. Brandler received her B.A. in history cum laude
23 from the Macaulay Honors College at the City University of New York in 2005, and her J.D. from the
24 Benjamin N. Cardozo School of law in 2009. While in law school, Ms. Brandler was an intern for the
25 Honorable Sandra L. Townes of the Southern District of New York where she assisted in drafting two
26 published decisions.

27 31. *Billing Rate.* Ms. Brandler's time is billed at \$750 per hour. Surveys I have reviewed
28 and experts I have consulted demonstrate to me that this rate is similar to the rates charged by comparable
attorneys for class action work and complex litigation.

32. *Significant Responsibilities on this Case.* Ms. Brandler was assigned responsibilities in
this case as needed, including drafting and/or reviewing drafts from other attorneys of the PAGA notices,
complaints, discovery, briefs, and motions.

1
2 **c. Ari Cherniak**

3 33. *Qualifications and Experience.* Mr. Cherniak has extensive class action litigation
4 experience. Mr. Cherniak's practice has focused on wage and hour employment and consumer class
5 action since 2010, during which time he has been appointed, along with other members of the
6 HammondLaw Team, as class counsel in over 70 class actions. Mr. Cherniak handles all aspects of
7 litigation, including drafting pleadings, motions/oppositions, briefs, and discovery, and brings to our team
8 an extensive knowledge of procedural requirements. He received his B.S. in Philosophy cum laude from
9 Towson University in 2007, and his J.D. from Tulane Law School in 2011.

10 34. *Billing Rate.* Mr. Cherniak's time is billed at \$650 per hour. Surveys I have reviewed and
11 experts I have consulted demonstrate to me that this rate is similar to rates charged by comparable
12 attorneys for similar class action work and complex litigation.

13 35. *Significant Responsibilities on this Case.* Mr. Cherniak was assigned responsibilities in
14 all aspects of the case, including discovery, data analysis, mediation brief, settlement agreement, class
15 notice, amended Settlement Agreement, and motions for preliminary and final approval. Mr. Cherniak
16 also attended the mediation via Zoom.

17 **d. Adrian Barnes**

18 36. *Qualifications and Experience.* Mr. Barnes is a recognized employment law and
19 consumer protection attorney, with over 12 years of experience. Since graduating from law school, Mr.
20 Barnes has spent the majority of his career representing the interests of employees and union members
21 in labor and employment cases. Mr. Barnes has represented clients in more than 20 arbitrations, before
22 the PERB, and before the NLRB. Mr. Barnes has also been appointed class counsel in more than 40 class
23 actions brought on behalf of employees and consumers, and has secured settlements totaling at least \$10
24 million. Mr. Barnes graduated from the University of California, Berkeley, in 2001, and from Columbia
25 Law School, in 2007, where he was a member of the *Columbia Law Review* and received the Emil
26 Schlesinger Labor Law Prize.

27 37. *Billing Rate.* Mr. Barnes' time is billed at an hourly rate of \$775. Surveys I have reviewed
28 and experts I have consulted demonstrate to me that this rate is similar to rates charged by comparable
attorneys for similar class action work and complex litigation.

38 38. *Significant Responsibilities on this Case.* All of Mr. Barnes time was spent reviewing
and editing the Settlement Agreement and preliminary approval motion.

HOURS SPENT ON LITIGATION ARE REASONABLE

1
2 39. I was responsible for managing Plaintiffs’ Counsel’s work including the work of other
3 attorneys employed to assist with litigation. In managing the case, I made every effort to litigate this
4 matter efficiently by coordinating the work of all the attorneys, minimizing duplication, and assigning
5 tasks in a time and cost-efficient manner, based on the timekeepers’ experience levels and talents. In
6 particular, I assigned most of the day-to-day work associated with drafting pleadings and discovery to
7 Mr. Cherniak, an associate with a lower billing rate, with oversight by me.

8 40. In my professional judgment, there can be no question that the involvement of each of the
9 attorneys in the case was necessary to provide adequate and effective representation to Plaintiffs in this
10 complex litigation. The varied types of abilities and levels of experience of the attorneys who worked on
11 this case allowed us to delegate tasks efficiently and provide skilled coverage. The instances where
12 multiple attorneys contributed to the same task were, in my professional judgment, necessary to ensure
13 coordination and accuracy, and to capture the particular expertise of each attorney.

14 41. In preparation for this motion, Mr. Cherniak oversaw a review of my firm’s time records
15 and exercised his billing judgment to delete and/or reduce certain time entries based on his experience in
16 similar lodestar calculation in other complex cases, and based on his knowledge of the tasks assigned to
17 each attorney in this case and how he or she approached each task.

18 42. In sum, it is my opinion and professional judgment that the hours spent by Plaintiffs’
19 Counsel were both reasonable and necessary to the effective representation of our client and the Class.
20 My opinion is informed by my involvement as lead-counsel, over a decade of experience in litigating
21 many large class actions in which, similar to this case, it was necessary to field and manage a team of
22 lawyers, with different levels of experience and types of expertise, to carry out the work required by the
23 case.

REASONABLE HOURLY RATES

24 43. Based on my knowledge of billing rates and practices and surveys and court decisions I
25 have reviewed, I believe that our hourly billing rates shown in the Table immediately below are consistent
26 with the rates charged by comparable attorneys for similar class action work and complex litigation,
27 including particular firms that regularly prosecute or defend employment class actions and other complex
28 litigation; and that the rates we charge are reasonable for attorneys of our experience, reputation, and
29 expertise practicing complex and class action litigation.

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2023 Rates		
Attorney/Timekeeper	Year Admitted	Rate
Julian Hammond, Principal	2000	\$925
Polina Brandler, Associate	2010	\$750
Ari Cherniak, Associate	2011	\$650
Adrian Barnes, Counsel	2007	\$775

44. HL's current hourly rates were approved in *Harrold v California Family Health LLC*, Case No. 34-2022-00323409 (Sacramento County Superior Court) (August 17, 2023); *Harris v Southern New Hampshire University*, Case No. RG21109745 (Alameda County Superior Court) (May 12, 2023); *Castillo v. Holy Names University*, Case No. HG21097245 (Alameda County Superior Court) (May 2, 2023); and *Carr et al v Konica Minolta Business Solutions U.S.A., Inc.*, Case No. 21CV001245 (Alameda County Superior Court) (June 27, 2023) (awarding 2.1 multiplier calculated using my firm's 2023 rates).

45. HL's slightly lower 2022 hourly rates have been approved in *Glor v iHeart Media + Entertainment*, Case No. 22CV005286 (Alameda County Superior Court) (February 14, 2023); *Cassidy v. Keyence Corporation of America*, Case No. 21CV382350 (Santa Clara County Superior Court) (February 8, 2023); *Rodriguez v. River City Bank*, Case No. 1-13-cv-257676 (Sacramento County Superior Court) (October 26, 2022); *Burleigh v. National University*, Case No. MSC21-00939 (Contra Costa County Superior Court) (Aug. 26, 2022); *Costa v. University of Antelope Valley*, Case No. 21STCV18531 (Los Angeles County Superior Court) (August 23, 2022); *Parsons v. La Sierra University*, Case No. CVRI2000104 (Riverside County Superior Court) May 19, 2022); *Sweetland-Gil v. University of the Pacific*, Case No. STK-CV-UOE-2019-0014682 (San Joaquin County Superior Court) (March 4, 2022); and *Senese v. University of San Diego*, Case No. 37-2019-00047124-CU-OE-CTL (San Diego County Superior Court) (February 8, 2022).

LODESTAR CROSSCHECK REPRESENTS A NEGATIVE MULTIPLIER

46. As of August 21, 2023, my firm has spent at least 189 hours working on this case. Using our firm's current billing rates, these hours equate to a lodestar of \$133,965, as follows:

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Attorney/Timekeeper	Rate	Hours	Lodestar
Julian Hammond, Principal	\$925	25.1	\$23,217.50
Polina Brandler, Associate	\$750	27.1	\$20,325.00
Ari Cherniak, Associate	\$650	128.50	\$83,525.00
Adrian Barnes Attorney	\$775	8.9	\$6,897.50
		189.60	\$133,965.00

47. The requested attorneys' fees of \$46,666.67 is \$87,298.33 *less than* HL's current lodestar and represents only 0.35 of my firm's lodestar to date. I estimate that my firm will spend an additional 10 to 15 hours finalizing the final approval papers, appearing at the final approval hearing, seeing the Settlement through to its conclusion, which is not included in Class Counsel's lodestar. Thus, the requested fees will represent an even smaller percentage of the lodestar by the time this case is concluded.

48. Although Class Counsel does not seek a multiplier, an analysis of the factors that Court's consider show that a multiplier would be appropriate.

49. My understanding is that the basis for approving multipliers include (1) the significant contingency risk assumed by Counsel in accepting the representation; (2) the novel and complex nature of the case; (3) the exceptional results achieved and the importance of the rights at stake; and (4) the preclusion of other employment that resulted from the intensive work required by this case. Though not sought, a multiplier to Class Counsel's lodestar would be justified based on all of the applicable factors.

A. Contingent Risk

50. My firm undertook and litigated this case on a contingent fee basis, assuming a significant risk that the litigation would yield no recovery and leave us uncompensated for our time and out of pocket costs. If the Parties continued to litigate this case, the Court would rule on class certification. Whichever claims cleared that hurdle would proceed to dispositive motions, and whichever claims cleared that hurdle, to trial. Regardless of the outcome at trial, the losing party would likely appeal. This process would take years to resolve.

51. Over the course of this litigation, Plaintiffs' Counsel have spent over 180 as-yet uncompensated attorney hours, as well as over \$10,000 in out-of-pocket costs all without any certainty of payment.

52. The requested fees award is a far less lucrative result than we usually hope and expect to recover when we agreed to represent Plaintiff and the Class with no guarantee of payment, and where we obtained a good recovery for the class in Defendant's many defenses.

1 **B. Skill Displayed in Presenting a Complex Case**

2 53. As an experienced wage and hour litigator, I am familiar with the inherent complexities
3 in class and representative wage and hour cases including issues of class certification and litigating legal
4 questions that fall within the many unsettled areas of wage and hour law. Plaintiffs and their attorneys
5 took on the responsibility of representing the interests of a class of 140 employees as well as the State of
6 California.

7 54. Plaintiffs faced significant risk on the merits based on Defendant’s contentions that (a)
8 Hibu had no liability for unreimbursed expenses in light of the \$373 biweekly reimbursement it provided
9 Class Members; (b) Hibu had no liability for unpaid overtime during the initial training period because
10 prior to Covid-19, CMs never worked more than 7 hours a day, and after COVID-19 Hibu changed to a
11 completely virtual training format so CMs worked even less than 7 hours a day; (c) Class Members did
12 not suffer injury as a result of Defendant failing to provide compliant wage statements so Defendant
13 would not be liable for penalties; and (d) any failure to pay all wages due upon discharge was not willful
14 because there existed a good faith dispute that Class Members were exempt during their entire
15 employment and not entitled to overtime pay.

16 **C. Significance of the Results Obtained**

17 55. Plaintiffs obtained excellent results in this case under the circumstances and after
18 discounting for the many risks listed above. The average recovery is \$433.62 and the highest recovery is
19 approximately \$2,374. In addition, following the filing of Plaintiffs’ lawsuit, Hibu changed its
20 reimbursement policy from a bi-weekly stipend to mileage-based reimbursement based on mileage
21 recorded and submitted by Class Members. Further, the Settlement is non-reversionary, meaning that all
22 the funds will be paid to the Class without the need for CMs to file a claim, and no funds will go back to
23 Hibu. Class Members will thus obtain a significant recovery in the near future if the settlement is finally
24 approved.

25 **D. Preclusion of Other Employment**

26 56. To meet the needs of the case, my firm had to divert attorney time that would otherwise
27 have been spent on the firm’s other wage and hour class actions.

28 **REQUESTED COSTS ARE REASONABLE**

29 57. Plaintiffs’ Counsel has incurred (or will incur) \$10,393.35 in out-of-pocket litigation
30 expenses which are summarized as follows:

31 ///

1
2 58. One Legal, LWDA, Case Anywhere, and Rezac Meyer costs were reasonably necessary
3 for filing the Complaints, PAGA Notice, stipulations, statements, and pleadings; and service of process
4 and other documents:

5 Mediation (Brian Walsh)	\$	4,975.00
6 OneLegal (filing/ service)	\$	1,561.75
7 Case Anywhere (filing / service)	\$	948.35
8 Technology hosting fee	\$	110.00
9 Witness locator costs	\$	2,000.00
10 Research	\$	500.00
11 Rezac Meyer (service)	\$	80.95
12 PAGA Submission	\$	75.00
13 Docket Retrieval	\$	22.20
14 Final Approval filing fee (anticipated)	\$	120.00
15 TOTAL	\$	10,393.35

16 59. Mediation costs represent half of the mediator fee of the private mediator who assisted the
17 parties during the all-day mediation, which was fundamental to reaching settlement.

18 60. Technology Hosting costs were reasonably necessary for maintaining databases necessary
19 for litigating this case.

20 61. Witness locator costs were reasonably necessary for Plaintiffs' investigation and factual
21 development of their claims and for their mediation brief.

22 62. Research costs were reasonably necessary for all aspects of the case including drafting
23 pleadings, the mediation brief, and Plaintiffs' motions for approval of class settlement.

24 63. My firm has incurred \$4,606.75 less than the \$15,000 provided for in the Settlement and
25 noticed to the Class.

26 I declare under penalty of perjury under the laws of the United States and the State of California
27 that the foregoing is true and correct. Executed on August 23, 2023.

28
Julian Hammond