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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**

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

15 Plaintiffs,

16 vs.

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

18
19 Defendant.

CASE NO. 22STCV01361

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

Date: September 15, 2023

Time: 9:00 a.m.

Dept. 17; Hon. Maren E. Nelson

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs seek final approval of a non-reversionary \$140,000 wage and hour class action settlement on behalf of 141 Account Representatives, Account Executives, Digital Account Executives, and other non-management sales representatives (“Class Members”) employed by Hibu Inc. (“Defendant” or “Hibu”) in California from January 12, 2018 through December 13, 2022 (“Class Period”).¹

The Class’s response has been overwhelmingly positive with not a single objection and only one opt-out. Declaration of Lluvia Islas Regarding Settlement Notice Administration (“Islas Decl.”), filed herewith, at ¶¶ 8-9. Despite facing risks based on Defendant’s defenses to the merits and class certification, Plaintiffs obtained an excellent result, with an average payment per Class Member of \$433.62 and the highest payment is \$2,374. Islas Decl. ¶ 13.

Accordingly, Plaintiffs respectfully request that the Court grant final approval of the proposed Settlement.

II. OVERVIEW OF THE SETTLEMENT

The Settlement resolves all claims of Plaintiffs and the proposed Class alleged in the operative Complaint. The Gross Settlement Amount (“GSA”) is \$140,000 and is non-reversionary. SA § 1.2. Hibu will also pay the employer’s share of payroll taxes separately from the GSA. *Id.* The Net Settlement Amount (“NSA”) – the amount remaining of the GSA after deductions of attorneys’ fees, costs, service awards, settlement administration costs, and PAGA penalties – will be paid pro rata to the Class Members who did not opt out. The average payment per Class Member is \$433.62 and the highest payment is \$2,374.16. *Id.* ¶ 13.

III. OVERVIEW OF NOTICE ADMINISTRATION

A. The Class Received Adequate Notice of the Settlement

Pursuant to the Preliminary Approval Order, Defendant provided the Settlement Administrator with the names, last known mailing addresses, Social Security numbers, dates of employment, and workweeks for each Class Member. Islas Decl. ¶ 3. After skip tracing and updating mailing addresses for Class Members, the Settlement Administrator mailed the Court-approved Notice via first-class mail

¹ The Escalator Clause in the Settlement Agreement provided that if the Class Size exceeded 139 individuals as of July 31, 2023, the Gross Settlement Amount would increase proportionally to the number of Class Members in excess of 139. There were 132 Class members as of July 31, 2023 so the Escalator Clause was not triggered. Islas Decl. ¶ 11.

1 to the Class. *Id.* ¶¶ 4-5. After mailing, 11 Notice Packets were returned. *Id.* ¶ 6. The Settlement
2 Administrator performed an advanced skip trace search and obtained an updated address for 7 of the
3 returned packets. *Id.* Ultimately, only 4 out of 142 Notices were undeliverable, which means that over
4 97% of the Notices were successfully mailed to the Class. *Id.* ¶ 7; Federal Judicial Center, *Judge’s Class*
5 *Action Notice and Claims Process Checklist and Plain Language Guide 3* (2010) (“The lynchpin in an
6 objective determination of the adequacy of a proposed notice effort is whether all the notice efforts
7 together will reach a high percentage of the class. It is reasonable to reach between 70-95%.”).

7 **B. No Class Members Objected and Only 1 Class Member Opted Out**

8 No Class Members objected; and only 1 opted out. Islas Decl. ¶¶ 8-9. Because this is a non-
9 reversionary settlement, the share allocated to the opt-out will be added to the Net Settlement and
10 distributed to the 141 participating Class Members.

10 **C. No Disputes to Workweek Calculations**

11 The Settlement Administrator received no workweek disputes. Islas Decl. ¶ 10.

12 **IV. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT**

13 **A. Legal Standard for Final Approval**

14 Court approval is required for the settlement of a class action. *See* Cal. Rule of Court 3.769. The
15 Court has broad discretion in reviewing a proposed class settlement for approval, which may be reversed
16 only upon a strong showing of clear abuse of discretion. *Wershba v. Apple Computer, Inc.*, 91 Cal. App.
17 4th 224, 234-35 (2001); *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 127-28 (2008).

18 This Court now must make a final determination of whether the proposed Settlement Agreement
19 is fair, reasonable, and adequate. *See Officers for Justice v. Civil Serv. Comm’n. of the City & Cnty. of*
20 *S.F.*, 688 F.2d 615, 625 (9th Cir. 1982); Manual for Complex Litigation (4th ed. 2004) (hereinafter
21 “Manual”) § 21.61 at 308. Final approval is warranted when “the interests of the class are better served
22 by the settlement than by further litigation.” Manual § 21.61 at 309. The law favors settlement,
23 particularly in class actions where substantial resources can be conserved by avoiding the time, cost, and
24 rigors of formal litigation. *See, e.g., 7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal.
25 App. 4th 1135, 1151 (2000) (“7-11”); *Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277-281 (1992)
Lealao v. Beneficial Cal., Inc., 82 Cal. App. 4th 19, 52 (2000) (California Supreme Court “has placed an
extraordinarily high value on settlement”); 4 Newberg on Class Actions (4th ed. 2002) § 11.41.

26 In analyzing whether a settlement is fair and reasonable, courts consider a number of factors,
27 including: (1) the amount offered in settlement; (2) the risk, expense, complexity, and likely duration of
28 further class action litigation; (3) the extent of discovery completed and the stage of the proceedings; (4)

1 the experience and view of counsel, and (5) the reaction of the Class to the proposed settlement. *Dunk*
2 *v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *Kullar*, 168 Cal. App. 4th at 133 (court must be
3 provided with information about nature and magnitude of claims and the basis for concluding that
4 consideration being paid represents reasonable compromise); *Clark v. Am. Residential Services, LLC*,
5 175 Cal. App. 4th 785, 790, 802-03 (2009).

6 The Court’s role is limited to making a reasoned judgment that the proposed class settlement
7 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,
8 and that the settlement as a whole is fair, reasonable, and adequate to the Class. *See* Manual § 21.61 at
9 309. “[T]he settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the
10 merits.” *7-11*, 85 Cal. App. 4th at 1145 (citation omitted). Rather, “[d]ue regard should be given to what
11 is otherwise a private consensual agreement between the parties.” *Dunk*, 48 Cal. App. 4th at 1801.

12 **B. The Settlement Is Presumptively Fair, Reasonable, and Adequate**

13 A settlement agreement is presumptively fair when it is (1) the product of arm’s-length
14 bargaining; (2) supported by sufficient investigation or discovery to allow assessment of Plaintiff’s
15 claims; (3) supported by experienced counsel; and (4) subject to only a small percentage of objections.
16 *See Dunk*, 48 Cal. App. 4th at 1802; *7-11*, 85 Cal. App. 4th at 1146. As described in detail in the
17 preliminary approval papers, and as briefly set forth below, this Settlement satisfies these factors. The
18 settlement, therefore, is presumptively fair, reasonable, and adequate.

19 First, the settlement resulted from extensive, arms-length negotiations during a full-day mediation
20 led by experienced and highly respected mediator Hon. Brian Walsh (Ret.). Declaration of Julian
21 Hammond in Support of Pls.’ Motion for Final Approval of Class Action Settlement and Motion for
22 Attorneys’ Fees and Costs and Enhancement Awards for Class Representatives (“Hammond Final
23 Decl.”), filed herewith, ¶ 19.

24 Second, Class Counsel engaged in substantial informal discovery prior to participating in
25 mediation. Defendant produced relevant data including (a) dates of employment for each Class Member
26 from the start of the Class Period through to July 31, 2022, including start date, end date, and leaves of
27 absence (if any); (b) training dates for each Class Member who completed an initial sales training during
28 the Class Period, and whether the training was in-person or virtual; (c) expense reimbursement policies
in effect during the Class Period; and (d) Plaintiffs’ personnel files. Hammond Final Decl. ¶ 17. The
Parties then drafted and exchanged briefs prior to the mediation. *Id.* ¶ 18.

1 Third, Class Counsel is experienced in this type of litigation having been approved as adequate
2 counsel or co-class counsel in over 50 putative wage and hour class actions. *See* Hammond Final Decl.
3 ¶¶ 25-36.

4 Fourth, as stated above, no Class Member objected and only 1 Class Member opted out. *Islas*
5 Decl. ¶¶ 8-9. The fact that this is a sophisticated class of sales representatives makes the “the magnitude
6 of the favorable response...particularly impressive.” *7-11*, 85 Cal. App. 4th at 1152-53.

7 The Settlement is thus presumptively fair, reasonable, and adequate, and should be finally
8 approved.

9 The Court should also grant final approval of the Settlement based on the following factors, which
10 evidence the fairness, reasonableness, and adequacy of the Settlement: (1) the value of the settlement;
11 (2) the risks inherent in continued litigation; (3) the extent of discovery completed and the stage of the
12 proceedings when settlement was reached; (4) the complexity, expense, and likely duration of litigation
13 absent settlement; (5) the experience and views of class counsel; and (6) the reaction of the class
14 members. *See, e.g., Dunk*, 48 Cal. App. 4th at 1801; *Kullar*, 168 Cal. App. 4th at 133.

15 **1. The Value of the Settlement Favors Final Approval Especially When Considered**
16 **Against the Risks, Expense, and Complexity of Continued Litigation**

17 The first two elements for determining whether a settlement is fair, reasonable, and adequate are
18 the amount offered in the settlement and the risk, expense, complexity, and likely duration of further
19 class action litigation. Both of these factors support approving the Settlement.

20 The Settlement provides the Settlement Class with very meaningful financial relief. *See Islas*
21 Decl. ¶ 13. All but one Class Member will participate in this Settlement, with an average recovery per
22 member of the Settlement Class of \$433.62 and the highest recovery of \$2,374. *Id.* This is an excellent
23 result considering Defendant’s many contentions including that (a) it had no liability for unreimbursed
24 expenses in light of the \$373 biweekly reimbursement it provided to Class Members; (b) it had no
25 liability for unpaid overtime during the initial training period because, CMs never worked more than 7
26 hours a day; (c) Class Members did not suffer injury as a result of Defendant failing to provide compliant
27 wage statements so Defendant would not be liable for statutory penalties; and (d) any failure to pay all
28 wages due upon discharge was not willful because there existed a good faith dispute that Class Members
were exempt during their entire employment and not entitled to overtime pay. *Hammond Final Decl.* ¶
54. In addition, following the filing of Plaintiffs’ lawsuit, Hibu changed its reimbursement policy from a
bi-weekly stipend to mileage-based reimbursement. *Id.* ¶ 55.

1 If the parties continued to litigate this case, the Court would rule on class certification. Whichever
2 claims cleared that hurdle would proceed to dispositive motions, and whichever claims cleared that
3 hurdle, to trial. Regardless of the outcome at trial, the losing party would likely appeal. This process
4 would take years to resolve. *Id.* ¶ 50. Instead, this settlement provides an early resolution of a dispute,
and CMs will recover in the relatively near future if the settlement is finally approved.

5 **2. Plaintiffs Conducted a Thorough Investigation and Discovery Prior to**
6 **Settlement, and Were Assisted by an Experienced Mediator**

7 Plaintiffs conducted a thorough investigation, engaged in informal discovery and analyzed highly
8 relevant class data provided by Defendant. Plaintiffs calculated the data points necessary to evaluate their
9 class claims, including class size, estimated unreimbursed expenses and overtime hours, average
10 overtime rate, number of formerly employed Class Members and their average daily rate, and the number
11 of inaccurate wage statements issued to the Class. Plaintiffs prepared a detailed damages analysis to better
12 identify the range of settlement figures for the claims alleged. Hammond Final Decl. ¶ 18. Thus,
Plaintiffs were adequately informed to make the decision to settle this case on the proposed terms.

13 Further, as discussed above, the Settlement was reached through arm's-length settlement
14 negotiations guided by experienced mediator Hon. Brian Walsh (Ret). Hammond Final Decl. ¶ 19. Mr.
Walsh's assistance in reaching this Settlement provides additional support that this is a fair Settlement.

15 **3. Class Counsel's Experience and Views Favor Final Approval**

16 As discussed above, Class Counsel is highly experienced and has a successful track record in
17 handling wage and hour class actions. *See* Hammond Final Decl. ¶¶ 24-36. Class Counsel believes the
18 Settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class. The
19 endorsement of qualified and well-informed counsel regarding the settlement as fair is entitled to
significant weight in the final approval process. *See Dunk*, 48 Cal. App. 4th at 1802.

20 **4. The Class Positive Reaction to the Settlement Favors Settlement**

21 The final element of a fair, reasonable, and adequate settlement is a positive reaction by the
22 Settlement Class to the settlement's terms. The Settlement Class's overwhelming positive response to
23 the Settlement here strongly favors final approval. As discussed above, only 1 (out of 142) Class Members
24 opted out, and no member of the Class objected. *Islas Decl.* ¶¶ 8-9. *See, e.g., 7-11*, 85 Cal. App. 4th at
25 1152-53 (1.5% opt-out rate and 0.1% objection rate supported final approval); *Nat'l Rural Telecomm.*
26 *Cooperative v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) (“[T]he absence of a large number
27 of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed
28 class action settlement are favorable to the class members.”). This positive response indicates nearly

1 universal acceptance of the Settlement's terms by Class Members and supports approval of the
2 Settlement.


3 **V. CONCLUSION**

4 Because the Settlement provides benefits that are demonstrably fair in relation to the potential
5 risk and benefits of continued litigation and is overwhelmingly supported by the Settlement Class,
6 Plaintiffs respectfully request that the Court grant final approval of the Settlement as fair, reasonable, and
adequate.

7 Dated: August 23, 2023

Respectfully submitted,

8 **HAMMONDLAW, P.C.**

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10 By: 
11 Julian Hammond
Attorneys for Plaintiffs and the Class