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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

NOV 09 2023

DAVID H. YAMASAKI, Clerk of the Court

BY: D. MIRANDA, DEPUTY

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF ORANGE**

10 JUAN FERNANDEZ, on behalf of himself
11 and all other aggrieved employees,

12 Plaintiff,

13 vs.

14 ABSTRAX TECH, INC., a California
15 Corporation; KEVIN KOBY, an individual,
16 and DOES 1 through 100,

16 Defendants,

Case No.: 30-2020-01150230-CU-OE-CXC
[Assigned for all purposes to Honorable Lon F.
Hurwitz Dept. CX103]

**FOURTH REVISED [PROPOSED] ORDER
AND JUDGMENT APPROVING PAGA
REPRESENTATIVE ACTION
SETTLEMENT**

Hearing
Date: October 13, 2023
Time: 1:30 p.m.
Dept. CX103

Action Filed: July 7, 2020
Trial Date: Not Currently Set

23 Pursuant to Plaintiffs' Motion For Approval of PAGA Representative Settlement by the
24 parties and good cause appearing:

25 Having considered the Parties' submissions, and all legal authorities and documents
26 submitted in support thereof, including the PAGA Settlement Agreement ("Agreement"), ROA
27 No. 109, and good cause appearing, IT IS HEREBY ORDERED that the Plaintiffs' Motion is
28

1 GRANTED, subject to the following findings and orders:

2 1) All terms used herein shall have the same meaning as defined in the Agreement, ROA No.
3 109, filed herewith,

4 2) The Court hereby approves the terms set forth in the Agreement and finds that the
5 Agreement is, in all respects, fair, adequate, and reasonable and directs the Parties to
6 effectuate the Agreement according to its terms. The Court finds that the Agreement has been
7 reached as a result of informed and non-collusive arm's-length negotiations. The Court
8 further finds that the Parties were able to reasonably evaluate their respective positions. The
9 Court also finds that settlement now will avoid additional and potentially substantial
10 litigation costs, as well as delay and risks if the Parties were to continue to litigate the case.
11 The Court has reviewed the monetary recovery being provided as part of the settlement and
12 recognizes the value accorded to the state of California and PAGA Settlement Employees.

13 3) The Agreement is not an admission by Defendants or by any other Releasees, nor is this
14 Order and Judgment a finding of the validity of any allegations or of any wrongdoing by
15 Defendants. Neither this Order and Judgment, the Agreement, nor any document referred to
16 herein, nor any action taken to carry out the Agreement, may be construed as, or may be used
17 as, an admission of any fault, wrongdoing, omission, concession or liability whatsoever by or
18 against Defendants or any of the other Releasees.

19 4) Defendants shall make the payments pursuant to the procedure described in the Agreement.

20 e) The payments to the PAGA Settlement Employees shall be mailed to them with the Notice
21 attached hereto as "Exhibit 1".

22 5) After reviewing the Agreement, the Declarations of Haig B. Kazandjian in support thereof
23 and the Exhibits attached thereto, and the underlying motion, the Court finds that the
24 settlement reached in this matter is fair and reasonable and therefore approves it pursuant to
25 Labor Code 2699(1)(2).

26 6) The Court hereby awards attorneys' fees in the amount of 30% of the Maximum Settlement
27 Amount, which is \$26,700 in attorneys' fees, plus \$8,145.84 in attorneys' costs. The Court
28 finds that attorneys' work resulted in the creation of a common fund of \$89,000.00 and that

1 the attorneys' fees and costs were reasonable in light of the amount recovered and the
2 relevant factors under California law. The payment of fees to Plaintiffs' Counsel shall be
3 made in accordance with the terms of the Agreement.

4 7) The Court appoints Simpluris, Inc. as the Settlement Administrator and directs that the
5 PAGA Payments be distributed by Simpluris, Inc. as set forth in the Agreement, and this
6 Order and Judgment. The Court approves Simpluris, Inc.'s Settlement Administration Costs
7 for its services in this matter in an amount of \$3,000.00 to be paid as set forth in the
8 Agreement.

9 8) The Court approves the Enhancement Payment to Plaintiff Juan Fernandez in the amount of
10 \$1,500;

11 9) Defendants and Plaintiff shall have no further liability for costs, expenses, interest,
12 attorneys' fees, or for any other charge, expense, or liability, except as may be provided in
13 the Agreement.

14 10) The Court further orders, adjudges and decrees that each PAGA Aggrieved Employee
15 (including Plaintiff) and the State of California, shall, Covered Period of February 14, 2019
16 through May 15, 2021, fully release and forever discharge Defendant and its present and
17 former parent companies, subsidiaries, divisions, related or affiliated companies, joint
18 venturers, shareholders, officers, directors, employees, agents, attorneys, insurers, re-
19 insurers, successors and assigns, and any individual or entity which could be jointly liable
20 with Defendant ("Releasees") from any and all covered claims for the time period of
21 February 14, 2019 through the Effective Date as defined by the Settlement Agreement to
22 mean the date the Court enters the order approving the settlement of the PAGA penalties
23 pursuant to the PAGA Settlement Agreement). As stated in the Settlement Agreement, ROA
24 No. 109, filed herewith, the covered claims include PAGA Penalties for the alleged
25 violations of California Labor Code sections 201, 202, 203, 204, 206, 226(a), 226.7, 246,
26 510, 512(a), 558(a), 1174(d), 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 2800, 2802, and
27 2810.5, based on the facts and theories set forth in the "Lawsuit" (which refers to the civil
28 action filed on July 7, 2020 entitled JUAN FERNANDEZ, an individual, on behalf of

1 himself and all other aggrieved employees, v. ABSTRAX TECH, INC., a California
2 Corporation; KEVIN KOBY, an individual, and DOES 1 through 100, inclusive, Superior
3 Court of the State of California for The County of Orange, Case No. 20-2020-01150230-CU-
4 OE-CJC) and/or Plaintiff's notice to the LWDA.

5 The Court hereby enters FINAL JUDGMENT in favor of Plaintiff and the Aggrieved
6 Employees in the amount of \$89,000.00 for Plaintiff's PAGA claims for penalties. The
7 Judgment is awarded and allocated as follows:

- 8 (i) Plaintiffs' Counsel's attorneys' fees in the amount of 30% of the Maximum Settlement
9 Amount, in the amount of \$26,700.00;
- 10 (ii) Plaintiffs' Counsel's costs in the amount of \$8,145.84;
- 11 (iii) Settlement Administration Costs in the amount of \$3,000.00 to be paid to the Settlement
12 Administrator;
- 13 (iv) \$1,500 to Plaintiff Juan Fernandez, as an enhancement award; and
- 14 (v) the remainder of the Maximum Settlement Amount after deducting the items (i), (ii), (iii),
15 and (iv) herein shall be designated as the PAGA Payment, which is estimated to be
16 \$49,654.16, and will be allocated between the LWDA and the PAGA Settlement
17 Employees pursuant to the Labor Code with 75% (\$37,240.62) paid to the LWDA and 25%
18 (\$12,413.54) paid to the PAGA Settlement Employees pursuant to the formula in the
19 Agreement.
- 20 (vi) Defendants shall have no further liability for costs, expenses, interests, attorneys' fees, or
21 for any other charge, expense or liability and shall be released from all PAGA Released
22 Claims and Plaintiffs' Released Claims, all as set forth in the Agreement.
- 23 (vii) This Judgment is intended to be a final disposition of the above-captioned case in its
24 entirety, and is intended to be immediately appealable.
- 25 (viii) The Court shall have and retain continuing jurisdiction over the Action and the Parties
26 and the State of California as real party in interest for the PAGA Settlement Employees
27 pursuant to California Code of Civil Procedure § 664.6 including after the entry of this Order
28 and Judgment, to the fullest extent necessary to interpret, enforce and effectuate the terms

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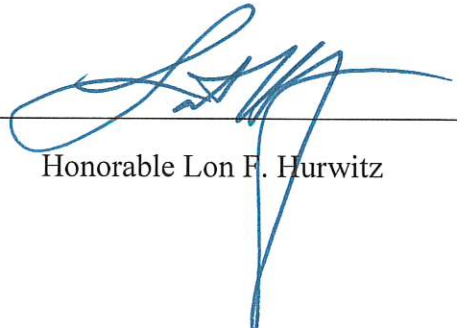
and intent of Agreement and this Order and Judgment.

(ix) Pursuant to Labor Code § 2699(1)(3), Plaintiff shall submit a copy of this Order and Judgment to the LWDA within ten (10) days of entry of this Order and Judgment.

(x) The Court hereby orders Plaintiff's Counsel to file a Declaration from the Settlement Administrator with a final accounting/distribution with the Court no later than July 16, 2024, and sets a Hearing Re Filing of Final Accounting for July 26, 2024 at 1:30 p.m. in Department CX103 at the Civil Complex Center Courthouse for the Orange County Superior Court.

IT IS SO ORDERED AND ADJUDGED.

DATED: _____ NOV 09 2023



Honorable Lon F. Hurwitz

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EXHIBIT 1

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This is NOT a lawsuit against you and you are NOT being sued.

If you were employed by ABSTRAX TECH, INC. as an hourly, non-exempt employee in California at any time during the time period from FEBRAURY 14, 2019, and May 15, 2021, then you are receiving money from a representative action settlement.

I. What is the Purpose of this Settlement?

II. What is the Position of Defendants on Settlement?

III. Why Did I Get this Notice?

IV. Who Are the Parties in this Representative Action?

This lawsuit was filed against Defendants ABSTRAX TECH, INC. and KEVIN KOBY, an individual. Plaintiff, a former employee, brought the action on behalf of himself and all Aggrieved Employees, as that term is defined above.

1 **V. What is the Settlement?**

2 Defendants have agreed to pay a Settlement Sum of \$89,000.00. This sum includes the
3 following expenses and costs: (1) fees for claims administration, which is \$3,000.00, (2) the
4 Labor Workforce Development Agency Payment in the estimated amount of \$37,240.62, (3)
5 an enhancement payment of \$1,500.00 to Plaintiff Juan Fernandez, and (4) Plaintiff's
6 attorneys' fees in the amount \$26,700.00 (i.e., 30% of the Settlement Sum) and litigation costs
7 not to exceed \$8,145.84). Each of these expense and fee amounts were approved by the Court
8 on October 13, 2023 ("Court-approved expenses").

9 After the deduction of the Court-approved expenses from the Settlement Sum, the remaining
10 sum ("Employee Net Settlement Amount") will be available to pay Aggrieved Employees.
11 Each Aggrieved Employee is receiving a proportionate share that is based on the total number
12 of pay periods the individual Aggrieved Employee worked for Defendants during the time
13 period from February 14, 2019 to May 15, 2021.

14 The amount paid to each Aggrieved Employee will be allocated 100% to penalties and will be
15 reported on an IRS Form 1099. The Parties agree that all Aggrieved Employees who receive
16 payment pursuant to this settlement will be responsible for any and all tax obligations
17 associated with such receipt. **You will be responsible for correctly characterizing this
18 compensation for tax purposes and paying any taxes that may be due on the payment
19 you receive. Neither Counsel for Plaintiff, Counsel for Defendants, nor the Settlement
20 Administrator may legally provide you with advice regarding the tax implications of the
21 receipt of this settlement payment.**

22 **VI. What is the Effect of this Settlement on My Rights?**

23 Each Aggrieved Employee is releasing Released Claims (defined below) against Defendants
24 ABSTRAX TECH, INC., a California Corporation; KEVIN KOBY, an individual and all
25 related parties.

26 The "Released Claims" are all claims against ABSTRAX TECH, INC., a California
27 Corporation; KEVIN KOBY, an individual and their present and former parent companies,
28 subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors,
employees, agents, attorneys, insurers, successors and assigns, and any individual or entity
which could be jointly liable with Defendants ("Releasees") from any and all PAGA penalty
claims for the time period of February 14, 2019 through May 15, 2021.

29 **VII. Why Does the Labor Workforce Development Agency Receive Any Money?**

30 PAGA allows private citizens to act on behalf of the State of California and recover civil
31 penalties for violations of California's Labor Code. Seventy-five percent (75%) of any such
32 recovery *must* be given to the State by law. Without PAGA, Plaintiff would not have been able
33 to bring this action on behalf of the Aggrieved Employees. In the present case, the Settlement
34 provides that an estimated amount of \$37,240.62 will be paid to the State as its share of the
35 penalties recovered in this case.

36 **VIII. How Much Did it Cost to Administer the Settlement?**

37 It will cost \$3,000.00 for the Settlement Administrator, Simpluris Inc., to fully administer the
38 settlement.

1 **IX. Who is the Settlement Administrator?**

2 The Settlement Administrator is an independent third party selected by Plaintiff and the
3 Defendants to send this notice, process and issue settlement checks, and otherwise administer
4 the settlement. The Court has approved Simpluris, Inc., to be the Settlement Administrator in
5 this case. You may contact the Settlement Administrator to provide updated contact
6 information, make corrections regarding your employment information at the Company, or ask
7 questions regarding the processing of settlement awards. You may contact the Settlement
8 Administrator at:

9 **EMAIL:**

CaseSupport@Simpluris.com

10 **CALL:**

888-369-3780

11 **MAIL:**

P.O. Box 26170
Santa Ana, CA 92799

12 **X. Who Can I Contact if I Have Any Questions?**

13 You can contact the Settlement Administrator for this representative action settlement at
14 www.simpluris.com Ask about *Fernandez v. Abstrax Tech Inc.* case.

15 **IMPORTANT: PLEASE DO NOT TELEPHONE THE COURT REGARDING THIS**
16 **SETTLEMENT OR THE CLAIM PROCESS.**