

FILED
Superior Court of California
County of Los Angeles

SEP 15 2023

David W. Slayton, 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 FINAL APPROVAL
OF CLASS ACTION SETTLEMENT**

Date: September 15, 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. 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 The gist of Plaintiffs’ claims is that Defendant failed to reimburse for all
11 necessary business expenses and improperly compensated Plaintiffs during a three
12 week training period.

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

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

24 The settlement was preliminarily approved on May 17, 2023. Notice was given
25 to the Class Members as ordered (see Declaration of Lluvia Islas (“Islas Decl.”)).

1 Before the Court is Plaintiffs' motion for final approval of the Settlement
2 Agreement, including for payment of fees, costs, and a service award to the named
3 plaintiffs.

4 5 **II. THE TERMS OF THE SETTLEMENT**

6 7 **A. SETTLEMENT CLASS DEFINITION**

8 "Class Members" refer to all persons who were employed by Defendant in
9 California as Account Representatives, Account Executives, Digital Account
10 Executives, or other non-management sales representatives at any time during the Class
11 Period, other than persons so employed who previously executed general releases of
12 claims in favor of Defendant. (§1.5)

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

14 "Aggrieved Employees" are Class Members who worked for Defendant at any
15 time during the PAGA Period. (§1.2)

16 "PAGA Period" means the period from October 26, 2020 to December 13, 2022.
17 (§1.14)

18 "Settlement Class Member" refers to a Class Member who does not request
19 exclusion from the Settlement. (§1.21)

20 21 **B. THE MONETARY TERMS OF SETTLEMENT**

22 The essential monetary terms are as follows:

- 23 • The Gross Settlement Amount ("GSA") is **\$140,000** (§1.11). This includes
24 payment of a PAGA penalty of **\$5,000** to be paid 75% to the LWDA (\$3,750)
25 and 25% to the Aggrieved Employees (\$1,250) (§8).

1 ○ Escalator Clause: If the total number of Class Members as of July 31,
2 2022 exceeded 133 by more than 5% (i.e., 140 or more Class Members),
3 then the GSA shall increase by an amount equal to the GSA multiplied by
4 a fraction, the numerator of which is the number of Class Members as of
5 July 31, 2022 in excess of 139, and the denominator of which is 139. For
6 example, if the number of Class Members as of July 31, 2022 is 142, the
7 increase in the Gross Settlement Value will be \$3,021.58 (\$140,000 x
8 3/139). It is understood and agreed that there shall be no increase in the
9 GSA as a result of the addition of Class Members who were hired by
10 Defendant from August 1, 2022 through the end of the Settlement Period.
11 (¶26)

12 ○ At final approval, the settlement administrator represents that the total
13 number of Class Members as of July 31, 2023 is 132. (Islas Decl. ¶11.)
14 At oral argument counsel represented that this was a typographical error
15 and that the correct date was July 31, 2022 such that there were an
16 additional 10 Class Members who began employment with Defendant
17 after July 31, 2022, thus making the total number of prospective class
18 members 142. (*Ibid.*) With one opt-out there are 141 proposed Class
19 Members.

20 ○ At preliminary approval, counsel calculated that Class Members worked
21 approximately 6,004 workweeks. (Decl. of Hammond filed 12/5/2022,
22 ¶36.) At final approval, the administrator represents that Settlement Class
23 Members have worked a collective total of 6,618.80 Workweeks during
24 the Class Period. (Islas Decl. ¶13.) This constitutes a 10.2% increase
25 from the initial estimate. Inquiry was made at oral argument concerning

1 this. Class Counsel represented that the increase in workweeks did not
2 make a material difference in the amount to be received by Class
3 Members, particularly because certain cost items were not appropriately
4 sought, increasing the New Settlement Amount. Defense counsel also
5 noted that in the estimation of his client the settlement remained fair,
6 given that defendant had a reimbursement policy and had, in fact,
7 provided reimbursements to proposed class members.

- 8 • The estimated Net Settlement Amount (“Net”) (**\$56,333.33**) at preliminary
9 approval was the GSA less:

- 10 ○ Up to **\$46,666.67** (33 1/3%) for attorney fees (¶6);
- 11 ○ Up to **\$15,000** for attorney costs (*Ibid.*);
- 12 ○ Up to **\$10,000 total** [\$5,000 to Plaintiff Kuntz; \$2,500 each to Plaintiffs
13 Hurtado and Pasno] for service awards to the proposed class
14 representatives (¶7);

- 15 ■ \$500 of each service award to Plaintiffs shall be allocated and paid
16 to each Plaintiff as consideration supporting their respective
17 Individual Settlement Agreement and General Release of Claims
18 (“Individual Release Agreements”) signed on September 16, 2022
19 (by Plaintiff Joel Pasno) and September 19, 2022 (by John Kuntz
20 and Rodella Hurtado). (¶1.18) Plaintiffs’ Individual Release
21 Agreements shall be enforceable even if the Court awards no
22 Enhancement/Service Award whatsoever to one or more of them
23 or a lesser amount than requested by Plaintiffs, and Plaintiffs
24 hereby waive all rights to challenge the enforceability of their
25 respective Individual Release Agreements. (¶7)

- Estimated **\$7,000** for settlement administration costs (§9).
- Defendant will separately pay the employer share of withholding taxes in addition to the GSA (§10.1.4).
- As discussed below, certain costs are disallowed. Approximately \$65,000.08 will be available for automatic distribution to participating class members. With 141 Class members, the average settlement share will be approximately \$460.99. ($\$65,000.08 \text{ Net} \div 141 \text{ class members} = \460.99). This is an amount in excess of that originally calculated. In addition, each Aggrieved Employee will receive a portion of the PAGA penalty, estimated to be \$16.03 per Aggrieved Employee. ($\$1,250 \text{ or } 25\% \text{ of } \$5,000 \text{ PAGA penalty} \div 78 \text{ Aggrieved Employees} = \16.03).
- There is no Claim Requirement (Notice p. 2).
- The settlement is not reversionary (§5).
- Individual Settlement Share Calculation: The NSA shall be paid pro rata to the Settlement Class Members based on the number of workweeks that each Settlement Class Member worked during the Class Period. (§10.1) If a Class Member timely and validly submits a Request for Exclusion, their share, less their share of PAGA Penalties, will return to the NSA and will be distributed to the remaining Settlement Class Members. (§10.1.1)
- PAGA Payment Calculation: 25% of the PAGA Penalties (\$1,250) shall be paid to Aggrieved Employees pro rata based on the number weeks worked by them during the PAGA Period. Aggrieved Employees will receive their share of the PAGA Penalties regardless of whether not they exclude themselves from the Settlement. (§8)
- Tax Withholdings: 10% of the NSA shall be allocated as wages and reported on IRS Form W-2. 90% of the NSA will be allocated to non-wage payments,

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 ISO Prelim ¶V; Supp. Decl. of Rodella Hurtado ISO Prelim ¶2; Supp.
16 Decl. of John Kuntz ISO Prelim ¶2; Supp. Decl. of Joel Pasno ISO Prelim ¶2;
17 Supp. Decl. of Angela Corcoran ISO Prelim ¶3; Decl. of Geoffrey C. Westbrook
18 ISO Prelim ¶3.)

19 **C. TERMS OF RELEASES**

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

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

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

- 23 • Effect of the Released Claims and PAGA Released Claims on *Lori Cruz v. Hibu,*
24 *Inc.*: As noted in Sections 18 and 19, the Released Claims and the PAGA
25 Released Claims apply to, cover and extinguish claims asserted in the First

1 Amended Complaint under Labor Code §§ 201, 202, 203, 226(a) and (e), 510,
2 1194, and 2699, and claims under the applicable Wage Order, and the alleged
3 failure to pay wages and overtime wages and related claims, all relating to work
4 performed during the first three weeks of employment (initial sales training), as
5 well as claims under Labor Code § 2802 and Business and Professions Code §§
6 17200 et seq. for the alleged failure to reimburse business expenses within the
7 Class Period. The Released Claims and PAGA Released Claims also apply to,
8 cover and extinguish claims asserted under the same Labor Code provisions in a
9 separate lawsuit brought by Lori Cruz, on behalf of herself and a putative class
10 in *Lori Cruz v. Hibu Inc.*, United States District Court for the Eastern District of
11 California, Case No. 2:22-cv-00959, only for wages and overtime wages, the pay
12 statements relating to wages and overtime wages paid and/or allegedly not paid,
13 and the associated claims for statutory penalties (including, but not limited to,
14 waiting time penalties for the alleged non-payment or late payment of final
15 wages and wage statement penalties), civil penalties, and unfair business
16 practices, in each case relating to work performed during the initial three weeks
17 of employment (initial sales training) within the Class Period and the PAGA
18 Period. The PAGA Released Claims also apply to, cover and extinguish PAGA
19 civil penalties arising from work performed during the first three weeks of
20 employment (initial sales training) and from Defendant's alleged failure during
21 the PAGA Period to reimburse business expenses in violation of Labor Code §
22 2802. The Released Claims and PAGA Released Claims do not otherwise
23 release the claims in the *Cruz* action. Each Settlement Class Member's check
24 will include the following language on the back: *Signing or negotiating this*
25 *check (1) releases all claims made against the Defendant in Pasno, et al. v. Hibu*

1 *Inc., Los Angeles County Superior Court Case No. 22STCV01361; and (2)*
2 *releases the claims asserted in Lori Cruz v. Hibu, Inc., United States District*
3 *Court for the Eastern District of California, Case No. 2:22-cv-00959, relating to*
4 *the first three weeks of your employment (initial sales training) with Defendant*
5 *and PAGA Penalties related to work performed during the first three weeks of*
6 *employment and to Hibu's alleged failure to reimburse business expenses. (§20)*

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

18 19 **III. ANALYSIS OF SETTLEMENT AGREEMENT**

20 "Before final approval, the court must conduct an inquiry into the fairness of the
21 proposed settlement." Cal. Rules of Court, rule 3.769(g). "If the court approves the
22 settlement agreement after the final approval hearing, the court must make and enter
23 judgment. The judgment must include a provision for the retention of the court's
24 jurisdiction over the parties to enforce the terms of the judgment. The court may not
25

1 enter an order dismissing the action at the same time as, or after, entry of judgment.”
2 Cal. Rules of Court, rule 3.769(h).

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

17 “The burden is on the proponent of the settlement to show that it is fair and
18 reasonable. However ‘a presumption of fairness exists where: (1) the settlement is
19 reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to
20 allow counsel and the court to act intelligently; (3) counsel is experienced in similar
21 litigation; and (4) the percentage of objectors is small.’” See *Wershba, supra*, 91
22 Cal.App.4th at pg. 245, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
23 1802. Notwithstanding an initial presumption of fairness, “the court should not give
24 rubber-stamp approval.” See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
25 116, 130. “Rather, to protect the interests of absent class members, the court must

1 independently and objectively analyze the evidence and circumstances before it in order
2 to determine whether the settlement is in the best interests of those whose claims will be
3 extinguished.” *Ibid.*, citing 4 Newberg on Class Actions (4th ed. 2002) § 11:41, p. 90. In
4 that determination, the court should consider factors such as “the strength of plaintiffs’
5 case, the risk, expense, complexity and likely duration of further litigation, the risk of
6 maintaining class action status through trial, the amount offered in settlement, the extent
7 of discovery completed and stage of the proceedings, the experience and views of
8 counsel, the presence of a governmental participant, and the reaction of the class
9 members to the proposed settlement.” *Id.* at 128. This “list of factors is not exclusive and
10 the court is free to engage in a balancing and weighing of factors depending on the
11 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at pg. 245.)

12 **A. A PRESUMPTION OF FAIRNESS EXISTS**

13 The Court preliminarily found in its Order of May 17, 2023 that the presumption
14 of fairness should be applied. No facts have come to the Court’s attention that would
15 alter that preliminary conclusion. The increase in workweeks does not materially impact
16 the fairness of the settlement. Counsel for Hibu also confirmed via CaseAnywhere post
17 that counsel for plaintiffs in Cruz was made aware of the settlement. Accordingly, the
18 settlement is entitled to a presumption of fairness as set forth in the preliminary approval
19 order.

20 **B. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

21 The settlement was preliminarily found to be fair, adequate and reasonable.
22 Notice has now been given to the Class and the LWDA. The notice process resulted in
23 the following:

24 Number of class members: 142

25 Number of notices mailed: 142

1 Number of undeliverable notices: 4

2 Number of opt-outs: 1

3 Number of objections: 0

4 Number of participating class members: **141**

5 (Islas Decl. ¶¶3-13.)

6 The Court finds that the notice was given as directed and conforms to due process
7 requirements. Given the reactions of the Class Members and the LWDA to the proposed
8 settlement and for the reasons set forth in the Preliminary Approval order, the settlement is
9 found to be fair, adequate, and reasonable.

10 **C. CLASS CERTIFICATION IS PROPER**

11 For the reasons set forth in the preliminary approval order, certification of the
12 Class for purposes of settlement is appropriate.

13 **D. ATTORNEY FEES AND COSTS**

14 Class Counsel requests **\$46,666.67** (33 1/3%) for attorney fees and **\$10,393.25** for
15 costs. (Memo ISO Attorneys' Fees at 1:3-4.)

16 Courts have an independent responsibility to review an attorney fee provision and
17 award only what it determines is reasonable. *Garabedian v. Los Angeles Cellular*
18 *Telephone Company* (2004) 118 Cal.App.4th 123, 128. A percentage calculation is
19 permitted in common fund cases. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480,
20 503.

21 In the instant case, fees are sought pursuant to the percentage method, as cross-
22 checked by lodestar. (Memo ISO Attorneys' Fees at pp. 2-7.) The \$46,666.67 fee
23 request is approximately one-third of the Gross Settlement Amount.

24 A lodestar is calculated by multiplying the number of hours reasonably expended
25 by the reasonably hourly rate. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084,

1 1095-1096 (*PLCM*). “Generally, ‘[t]he lodestar is calculated using the reasonable rate
2 for comparable legal services in *the local community* for noncontingent litigation of the
3 same type, multiplied by the reasonable number of hours spent on the case.’ ”

4 *Environmental Protection Information Center v. Dept. of Forestry & Fire Protection*
5 (2010) 190 Cal.App.4th 217, 248, quoting *Nichols v. City of Taft* (2007) 155
6 Cal.App.4th 1233, 1242-1243.

7 As to the reasonableness of the rate and hours charged, trial courts consider
8 factors such as “the nature of the litigation, its difficulty, the amount involved, the skill
9 required in its handling, the skill employed, the attention given, the success or failure,
10 and other circumstances.” *PLCM, supra*, 22 Cal.4th at p. 1096. “The evidence should
11 allow the court to consider whether the case was overstaffed, how much time the
12 attorneys spent on particular claims, and whether the hours were reasonably expended.”
13 *Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1320.

14 Attorney Hammond represents that his firm spent a total of 189.60 hours on the
15 action. (Declaration of Julian Hammond ISO Final ¶46.) At hourly rates ranging from
16 \$650 to \$925, the four attorneys at his firm who worked on the matter incurred a lodestar
17 of \$133,965. (*Ibid.*) He represents that his firm’s current and slightly lower 2022 hourly
18 rates were approved by other courts. (*Id.* at ¶¶44-45.) He also provides a summary of the
19 general tasks performed by Plaintiffs’ counsel at each stage of the litigation. (*Id.* at ¶¶10-
20 22.) The Court makes no findings as to the reasonableness of the hourly rates. However,
21 the **\$46,666.67** fee request represents a reasonable percentage of the total funds paid by
22 Defendant. Further, the notice expressly advised class members of the fee request, and
23 no one objected. (Islas Decl. ¶9, Exhibit A thereto.) Accordingly, the Court awards fees
24 in the amount of **\$46,666.67**.

1 Class Counsel requests **\$10,393.25** in costs. This is less than the \$15,000 cap
2 provided in the settlement agreement (§27.m). The amount was disclosed to Class
3 Members in the Notice, and no objections were received. (Islas Decl. ¶9, Exhibit A
4 thereto.) Costs include: Mediation (\$4,975), OneLegal (filing/service) (\$1,561.75), and
5 Case Anywhere (\$948.35). (Hammond Decl. ISO Final ¶58.)

6 The costs of \$500 for "Research," \$2,000 for "Witness locator costs" and \$110
7 for "Technology hosting fee" appear to be overhead. At oral argument Plaintiffs'
8 counsel indicated these requests were withdrawn.

9 Costs of **\$7,783.25** are approved.

10 **E. SERVICE AWARDS TO CLASS REPRESENTATIVES**

11 Service awards are established in California and the Ninth Circuit in class
12 actions. See *Cellphone Termination Fee Case* (2010), 186 Cal.App.4th 1380, 1393-
13 1394 (noting the "scholarly debate about the propriety of individual awards to named
14 plaintiffs" and the "surprising dearth of California authority directly addressing this
15 question"); *In re Apple Device Litigation* (9th Cir. 2022) 50 F. 4th 769, 785; *Roes, 1-2 v.*
16 *SFBSC Mgmt., LLC* (9th Cir. 2019) 944 F.3d 1035, 1057 (reasonable incentive
17 awards are permitted to compensate class representatives for work on behalf of the class
18 and financial or reputational risk undertaken in bringing the action).

19 Their apparent purpose is to reimburse actual expenses or to compensate a plaintiff
20 where the market would not otherwise produce a plaintiff. *In Re Continental Securities*
21 *Litigation* (7th Cir. 1992) 962 F. 2d 566, 571-572. There is some question as to their
22 continuing viability. See *Johnson v. NPAS Solutions* (11th Cir. 2020) 975 F.3d 1244;
23 *Fikes Wholesale, Inc. v. Visa U.S.A., Inc.* (2d Cir. 2023) 62 F.4th 704 (Concurring
24 opinions). However, under existing California and Ninth Circuit authority they are
25 permitted where there is a showing of the time and effort expended by the individual and

1 a reasoned explanation of financial or other risks undertaken by the class
2 representative. See *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th
3 785, 806-807; see also *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380,
4 1394-1395 ["Criteria courts may consider in determining whether to make an incentive
5 award include: (1) the risk to the class representative in commencing suit, both financial
6 and otherwise; (2) the notoriety and personal difficulties encountered by the class
7 representative; (3) the amount of time and effort spent by the class representative; (4) the
8 duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the
9 class representative as a result of the litigation. (Citations.)"].

10 In determining the reasonableness of a requested incentive award, some courts
11 have considered, among other factors, the proportionality between the incentive award
12 requested and the average class member's recovery. *Id.* See also *Munoz v. BCI Coca-*
13 *Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412-413. (Service award
14 that was approximately twice what was paid to class members was appropriate exercise
15 of Court's discretion). A service award is **not** appropriately additional consideration for a
16 release of additional claims. See *Grady v. RCM Techs., Inc.* (C.D.Cal. May 2, 2023, No.
17 5:22-cv-00842 JLS-SHK) 2023 U.S.Dist.LEXIS 84145, at *24-32 and cases cited therein.

18 Plaintiffs seek service awards in the amounts of **\$5,000** for Plaintiff Kuntz and
19 **\$2,500 each** for Plaintiffs Pasno and Hurtado, totaling **\$10,000**. (Memo ISO Attorneys'
20 Fees at 1:4-6.) They urge that the awards are appropriate for the following reasons:

21 Plaintiff Kuntz represents that his contributions to the action include: discussing
22 his former employment with his counsel, obtaining and providing documents to his
23 counsel, reviewing the complaint, attending the full day mediation remotely, maintaining
24 contact with his attorneys throughout the case, and reviewing the settlement.

25 (Declaration of John Kuntz ISO Final ¶¶3-8.) He estimates spending 11 hours on the

1 case. (*Id.* at ¶9.) He asserts that by bringing the lawsuit he risked being labeled as a
2 “troublemaker” by Defendant and other employers in the industry, though he has not
3 shown that this has affected him. (*Id.* at ¶10.)

4 Plaintiff Pasno represents that his contributions to the action include: discussing
5 his former employment with his counsel, providing documents to his counsel, reviewing
6 the complaint, being available by phone during the mediation, and reviewing the
7 settlement documents. (Declaration of Joel Pasno ISO Final ¶¶3-10.) He estimates
8 spending 5.5 hours on the case. (*Id.* at ¶9.) He asserts that by filing the lawsuit he
9 feared there would be negative repercussions with employers in his industry, impacting
10 his ability to get job offers, though he has not shown that this has occurred. (*Id.* at ¶13.)

11 Plaintiff Hurtado represents that her contributions to the action include:
12 discussing her former employment with her counsel, providing documents to her
13 counsel, reviewing the PAGA notice and complaint, being available by phone during the
14 mediation, reviewing settlement documents, and speaking to former co-workers about
15 the claims after notice was issued. (Declaration of Rodella Hurtado ISO Final ¶¶3-9.)
16 She estimates spending 11 hours on the case. (*Id.* at ¶10.) She asserts that being the lead
17 plaintiff in a lawsuit against Defendant has been “stressful” and she is “nervous” about
18 having a bad reputation with former co-workers and potential employers, though she has
19 not shown that this has affected her job prospects. (*Id.* at ¶11.)

20 In light of the above-described contributions to this action, and taking into
21 account the average amount payable to Class Members (average of approximately \$461)
22 and the benefits obtained on behalf of the class, as well as the risk undertaken and the
23 time expended, and recognizing that Plaintiffs are being paid from the gross settlement
24 amount for their individual releases, service awards in the amounts of \$4,500 for
25

1 Plaintiff Kuntz and **\$2,000 each** for Plaintiffs Pasno and Hurtado are reasonable and
2 approved.

3 **F. SETTLEMENT ADMINISTRATION COSTS**

4 The Settlement Administrator, Phoenix Class Action Administration Solutions,
5 requests **\$6,800** in compensation for its work in administering this case. (Islas Decl.
6 ¶16.) At the time of preliminary approval, costs of settlement administration were
7 estimated at \$7,000 (¶9). Class Members were provided with notice of this amount and
8 did not object. (Islas Decl. ¶9, Exhibit A thereto.)

9 Accordingly, settlement administration costs are approved in the amount of
10 **\$6,800.**

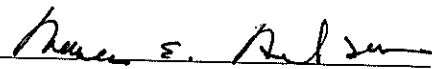
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12 **IV. CONCLUSION AND ORDER**

13 The Court hereby:

- 14 (1) Grants class certification for purposes of settlement;
15 (2) Grants final approval of the settlement as fair, adequate, and reasonable;
16 (3) Awards **\$46,666.67** in attorney fees to Class Counsel, HammondLaw PC;
17 (4) Awards **\$7,783.25** in litigation costs to Class Counsel;
18 (5) Approves payment of **\$3,750** (75% of \$5,000 PAGA penalty) to the LWDA;
19 (6) Awards Class Representative Service Awards of **\$4,500** to Plaintiff Kuntz and
20 **\$2,000 each** to Plaintiffs Pasno and Hurtado;
21 (7) Awards **\$6,800** in settlement administration costs to Phoenix Class Action
22 Administration Solutions;
23 (8) Orders class counsel to lodge a proposed Judgment, consistent with this ruling
24 and containing the class definition, full release language, and the name of the
25 class member who opted out by September 25, 2023;

- 1 (9) Orders class counsel to provide notice to the class members pursuant to
2 California Rules of Court, rule 3.771(b) and to the LWDA pursuant to Labor
3 Code §2699 (1)(3); and
4 (10) Sets a Non-Appearance Case Review re: Final Report re: Distribution of
5 Settlement Funds for July 12, 2024 at 8:30 a.m. Final Report is to be filed five
6 court days in advance.
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8 Dated: 9/15/25



9 MAREN E. NELSON

10 Judge of the Superior Court
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