

1
2
3
4 IN THE UNITED STATES DISTRICT COURT
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA
6

7 JUAN QUINTANILLA VASQUEZ, et
8 al.,

9 Plaintiffs,

10 v.

11 LIBRE BY NEXUS, INC.,

12 Defendant.

Case No. 17-cv-00755 CW

[PROPOSED] ORDER GRANTING
MOTION FOR FINAL APPROVAL OF
SETTLEMENT AND GRANTING
MOTION FOR ATTORNEY FEES,
COSTS, AND SERVICE AWARDS

Re: Dkt. No. 152, 147

13
14 On December 9, 2020, and February 3, 2021, this Court heard
15 the motion for final approval of a class action settlement
16 brought by Plaintiffs Juan Quintanilla Vasquez, Gabriela Perdomo
17 Ortiz, Victor Hugo Catalan Molina, and Kevin Calderon
18 (Plaintiffs). The Court has reviewed (1) the motion and the
19 supporting papers, including the operative Settlement Agreement
20 and Release (Agreement or Settlement), Jason Rathod Decl., Ex. 1,
21 Docket No. 143-1; (2) any objections filed with or presented to
22 the Court; (3) Plaintiffs' and Defendant Libre by Nexus, Inc.'s
23 (LBN) (collectively, the Parties) responses to any objections;
24 (4) counsel's arguments; and (5) the parties' filings after the
25 December 9, 2020, hearing. Based on this review and the findings
26 below, the Court GRANTS the motion for final approval of the
27 Settlement, as well as Plaintiffs' motion for attorneys' fees,
28 costs, and service awards.

1 FINDINGS

2 1. Unless otherwise specified, defined terms in the
3 Agreement have the same definition as used in this Final Approval
4 Order and Judgment.

5 2. This Court has jurisdiction over the subject matter of
6 the Agreement with respect to and over all parties to the
7 Agreement, including Plaintiffs and all Settlement Class Members.

8 3. Venue is proper in this judicial district.

9 4. The Court finds that the parties entered into the
10 Settlement in good faith; that the Settlement is fair,
11 reasonable, and adequate; and that the Settlement satisfies the
12 standards and applicable requirements for final approval under
13 Federal Rules of Civil Procedure 23(a) and 23(b)(3).

14 5. The Parties adequately performed their obligations to
15 date under the Agreement.

16 6. Defendant LBN and the Settlement Administrator provided
17 notice to the Settlement Class Members in compliance with the
18 Agreement, Rule 23, the California and United States
19 Constitutions, and other applicable law. The notice: (a) fully
20 and accurately informed Class Members about the lawsuit and
21 Settlement; (b) provided sufficient information so that the
22 Settlement Class Members were able to decide whether to accept
23 the benefits offered, opt out and pursue their own remedies, or
24 object to the Settlement; (c) provided procedures for Class
25 Members to file written objections to the Settlement, appear at
26 the final fairness hearing, and state objections to the
27 Settlement; and (d) provided the time, date, and place of the
28 final fairness hearing. The Court has afforded a full

1 opportunity to all Settlement Class Members to be heard.
2 Accordingly, the Court determines that all Settlement Class
3 Members, except those who timely excluded themselves from the
4 Settlement Class, are bound by this Final Approval Order and
5 Judgment.

6 7. Within ten (10) days after the filing of the Agreement in
7 this Court, LBN served a notice of the proposed settlement upon
8 the appropriate state official of each State in which a Class
9 member resides and upon the Attorney General of the United
10 States. The Court finds that the notice provided by LBN
11 satisfies the requirements of 28 U.S.C. § 1715(b) and that more
12 than ninety (90) days have elapsed since LBN provided the
13 required notice, as required by 28 U.S.C. § 1715(d).

14 8. An award of \$800,000 in attorneys' fees and costs is fair
15 and reasonable in light of the nature of this case, Class
16 Counsel's experience and efforts in prosecuting this Action, and
17 the benefits obtained for the Class. This amount represents
18 twenty-five percent of the settlement fund and is in line with
19 the twenty-five-percent benchmark that the Ninth Circuit deems to
20 be presumptively reasonable. When cross-checked against the
21 lodestar, which is \$1,838,964.81, the award represents a
22 multiplier of .44, which further supports the Court's finding
23 that the award is fair and reasonable.

24 9. An incentive award to Plaintiffs in the amount of \$10,000
25 for each named Plaintiff, for a total of \$40,000, is fair and
26 reasonable in light of the risks that Plaintiffs undertook
27 (including financial, professional, and emotional) in commencing
28 this Action as the Class Representatives; the time and effort

1 spent by Plaintiffs in litigating this Action as the Class
2 Representatives; Plaintiffs' full release and waiver of all known
3 and unknown claims; and Plaintiffs' public interest and service.

4 IT IS HEREBY ORDERED THAT:

5 1. Class Members. For Settlement purposes only, the Court
6 makes final its preliminary certification of the following
7 Settlement Class:

8 All current or former LBN "program
9 participants" and "sponsors" who paid, or
caused to be paid on their behalf, a fee to
10 LBN. Excluded from the Class are: (a)
11 individuals for whom LBN or any surety or
bond company has paid a treasury invoice or
12 the bond or for whom a demand for payment
for breach of a bond has been made by the
13 U.S. Government which remains outstanding or
open; (b) any judge or magistrate presiding
14 over this action and members of their
families; (c) Defendant and its current or
15 former employees; and (d) all persons who
properly execute and file a timely request
for exclusion.

16 The Class is also comprised of three Subclasses, defined as
17 follows:

18 Current Program Participant Subclass:

19 All current LBN "program participants" and
20 "sponsors" who paid, or caused to be paid,
or caused to be paid on their behalf, a fee
to LBN.

21 Former and Current Program Participant
22 Payments Subclass:

23 All former LBN "program participants" who
24 paid, or caused to be paid on their behalf,
a "Program Payment" to LBN and all current
25 LBN "program participants" who, within six
months of the "Final Settlement Approval
26 Date" have been issued a Form I-391.

27
28

Sponsor Payments Subclass:

All sponsors of members of the Former and Current Program Participants Payments Subclass who paid a fee to LBN, including any initial payment or set up fee.

2. Binding Effect of Order. This Order applies to all claims or causes of action settled under the Settlement Agreement, and binds all Class Members, including those who did not properly request exclusion under paragraph eight of the Preliminary Approval and Provisional Class Certification Order, Docket No. 144. This Order does not bind persons who filed timely and valid requests for exclusion. The persons who properly requested to be excluded from the Settlement are listed in Exhibit D to the Declaration of Jennifer Keough, Docket No. 152-2.

3. Objections Overruled. The Court has considered and hereby overrules all objections brought to the Court's attention, whether properly filed or not.

The parties clarified and agreed during the December 9, 2020, hearing, (1) that attorneys' fees will not be paid before eligible Settlement Class Members receive their cash payment under the Settlement; (2) that the Settlement Class Members will not be releasing any personal injury claims; (3) that the release carves out claims brought by state attorneys general; and (4) that the release will not preclude state attorneys general from obtaining restitution or other relief on behalf of consumers. Accordingly, the objections of the attorneys general of New York, Virginia, and Massachusetts (attorneys general) with respect to these matters are overruled as moot. See Reply Br. by the

1 Attorneys General at 3, Docket No. 155 (stating that the parties'
2 clarifications "resolve" the objections of the attorneys general
3 with respect to the aforementioned matters).

4 The attorneys general object to the Settlement on the
5 grounds that the monetary relief that eligible Settlement Class
6 Members will receive is unjustifiably delayed and discounted, and
7 that the terms describing the timing of LBN's cash payments are
8 not sufficiently clear. The Court overrules this objection on
9 the grounds that the parties have shown that the timing and
10 amounts of the monetary relief at issue are appropriate in light
11 of LBN's strained financial situation, and that the Settlement is
12 sufficiently definite as to the timing for when LBN must make and
13 complete the cash payments required by the Settlement. Moreover,
14 Plaintiffs represent, and the Court finds, that the other relief
15 that LBN is required to provide pursuant to the Settlement, which
16 will not be delayed or reduced as a result of LBN's financial
17 situation, is the most significant and important aspect of the
18 Settlement Class Members' recovery under the Settlement, and that
19 this weighs in favor of granting final approval of the
20 Settlement.

21 The attorneys general also object to the notice plan,
22 arguing that, unless the Court requires the Settlement
23 Administrator to send additional text messages or direct mailings
24 to the Settlement Class Members, the notice plan does not satisfy
25 the requirements of Rule 23 and due process. The Court overrules
26 this objection on the grounds that (1) the parties represent that
27 the Settlement Class Members change residences frequently and
28 that text messages are, therefore, the method of communication

1 most likely to be effective in reaching them; (2) the text
2 messages that the Settlement Administrator has sent to date were
3 sent to the most recent numbers that LBN has for Settlement Class
4 Members; (3) the notice plan required forms of notice other than,
5 and in addition to, text messages, including direct postcard
6 notice to the Settlement Class Members who could not be
7 reasonably reached by text message, published notice, mailed
8 notice to the American Immigration Lawyers Association and
9 National Immigration Project of the National Lawyers Guild, and
10 publication of the notice on the Settlement Website; and (4)
11 there is evidence that the notice plan was effective, as the
12 settlement website had more than 6,000 visitors and the
13 settlement phone number received more than 2,000 calls. In light
14 of the foregoing, the Court finds that the notice plan was the
15 best practicable under the circumstances and that it satisfies
16 the requirements of Rule 23 and due process. See, e.g., Rosas v.
17 Sarbanand Farms, LLC, No. C18-0112-JCC, 2019 WL 859225, at *2
18 (W.D. Wash. Feb. 22, 2019) (approving plan to notify settlement
19 class members "by text message" as the best practicable on the
20 ground that "class members do not have permanent addresses in the
21 U.S. and class counsel has 96 percent of their phone numbers");
22 Avendano v. Averus, Inc., No. 14-CV-01614-CMA-MJW, 2016 WL
23 11692088, at *2 (D. Colo. Oct. 25, 2016) ("Given the undisputed
24 transient nature of the class and Plaintiff's assertion that text
25 messaging is the most reliable form of communication, the Court
26 finds that notification by text message is likely to be a viable
27 and efficient means of notifying many prospective members of this
28 collective action.").

1 Objector Oscar Campos, who is represented by Kelly Salzman
2 of the Legal Aid Justice Center, objects to the Settlement,
3 arguing that it is not clear as to whether Settlement Class
4 Members will be able to assert an affirmative defense of fraud in
5 the inducement or lack of contract formation to the extent that
6 LBN or third parties attempt to collect on Settlement Class
7 Members' debts in the future. The Court overrules this objection
8 on the ground that the Settlement does not expressly waive any
9 affirmative defense that any Settlement Class Member may raise in
10 any future debt collection proceedings filed by LBN against any
11 Settlement Class Member.

12 4. No Admission. Neither this Final Approval Order and
13 Judgment nor the Agreement is an admission or concession by LBN
14 of the validity of any claims or of any liability or wrongdoing
15 or of any violation of law and not an admission by Plaintiffs
16 that their claims lacked merit.

17 5. Dismissal. This Court hereby dismisses with prejudice
18 this Action and all claims of Class Representatives and
19 Settlement Class Members against LBN that have been, or could
20 have been, alleged in the Action arising out of or relating in
21 any way to any of the legal, factual, or other allegations made
22 in the Action, or any legal theories that could have been raised
23 based on the allegations of the Action.

24 6. Release. Plaintiffs and all Settlement Class Members who
25 did not properly request exclusion are deemed to have released
26 and discharged LBN from all claims arising out of or relating in
27 any way to any of the legal, factual, or other allegations made
28 in the Action, or any legal theories that could have been raised

1 based on the allegations of the Action, including without
2 limitation allegations made in any version of the complaint filed
3 in the Action and claims released under the Settlement Agreement,
4 as described in the Agreement.

5 7. By operation of this judgment, Plaintiffs, but not
6 Settlement Class Members, also expressly waive any and all
7 claims, rights, or benefits they may have under California Civil
8 Code § 1542 and any similar federal or state law, right, rule, or
9 legal principle that may apply. California Civil Code § 1542
10 provides as follows:

11 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
12 THAT THE CREDITOR OR RELEASING PARTY DOES
13 NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
14 FAVOR AT THE TIME OF EXECUTING THE RELEASE
15 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
16 MATERIALLY AFFECTED HIS OR HER SETTLEMENT
17 WITH THE DEBTOR OR RELEASED PARTY.

18 8. LBN releases, waives, and forever discharges Plaintiffs
19 and each Member of the Payments Subclasses ("Plaintiff
20 Releasees") who has fully paid his or her obligations to LBN and
21 who has not opted out of the Settlement Class from any and all
22 claims it has or may have against the Plaintiff Releasees with
23 respect to any claim for existing Program Payments or fees.

24 9. Injunction Against Asserting Released Claims. Class
25 Representatives and the Settlement Class Members, and LBN, having
26 released all claims as described above, are permanently enjoined
27 from commencing or prosecuting any of those claims against the
28 released parties as described above, provided, however, that this
injunction shall not apply to individual claims of Settlement
Class Members who properly excluded themselves from the

1 Settlement Class, who are listed in Exhibit D to the Declaration
2 of Jennifer Keough, Docket No. 152-2. This injunction is
3 necessary to protect and effectuate the Settlement, this Final
4 Approval Order and Judgment, and the Court's flexibility and
5 authority to effectuate this settlement and to enter judgment
6 when appropriate, and is ordered in aid of the Court's
7 jurisdiction and to protect its judgments pursuant to 28 U.S.C.
8 § 1651(a).

9 10. Class Relief. The Settlement Amount will be used to
10 provide benefits to or on behalf of the Settlement Class as set
11 forth in the Agreement. Payments shall be made according to the
12 schedule set forth in the Agreement.

13 a. Cash relief. The Settlement Administrator shall
14 issue a payment to each Former and Current Program Participant
15 Payments Subclass Member and Sponsor Payments Subclass Member in
16 accordance with the Agreement. If there is an amount remaining
17 following the initial distribution such that each recipient would
18 receive at least \$5 in a secondary distribution, then there shall
19 be a secondary distribution, as stated in the Agreement. If any
20 funds remain after this second distribution, or if there is an
21 amount less than \$5 per recipient following the initial
22 distribution, those funds shall be paid to the Cy Pres Recipients
23 in accordance with the Agreement.

24 b. Debt relief. The remainder of the Settlement
25 Amount, after payment of the cash relief referenced above, Notice
26 and other Administrative Costs, any Incentive Award as set forth
27 herein, and any Fee and Expense Award as set forth herein, will
28 consist of credits to be made to the accounts of current program

1 participants for past due program fees due and owing as of the
2 date the Plaintiffs filed their motion for Preliminary Approval,
3 as set forth in the Agreement.

4 c. Additional monetary relief. As set forth in the
5 Agreement, members of the Current Program Participant Subclass
6 will benefit from several financial changes to their contracts
7 with LBN and LBN's business practices. First, Program
8 Participants who make three (3) consecutive monthly payments on
9 time and in full will have their monthly recurring fee reduced by
10 ten percent (10%) [the Consecutive Payment Discount]. Program
11 Participants who make an additional three (3) consecutive monthly
12 payments on time and in full (for a total of 6 consecutive on
13 time and in full payments) will have their monthly recurring fee
14 reduced by a further ten percent (10%) from the original fee
15 amount set for each program participant [the Second Consecutive
16 Payment Discount] for a total of a twenty percent (20%) discount
17 from their original recurring fee. Second, Program Participants
18 who pay more than \$420 per month in monthly recurring program
19 fees, and pay on time and in full by the first of the month,
20 shall have their payment that month reduced to \$415. Third, LBN
21 will impose a total payment cap for Program Payments, excluding
22 the initial payment and set up fees made by the program
23 participants or their sponsors, to an amount not to exceed the
24 face amount of the bond. Fourth, LBN will stop all monthly
25 payments upon termination of immigration proceedings. Fifth, LBN
26 will provide fee waivers of at least \$150,000 per year to Program
27 Participants.

28 d. Other business practice changes. LBN will also

1 provide programmatic and other non-monetary benefits to
2 Settlement Class Members through other business practice changes
3 set forth in the Agreement, which include but are not limited to:
4 (1) translating written and verbal contracts and posting them
5 online; (2) providing clear and concise contract terms; (3) using
6 best efforts to ensure meaningful program participant and sponsor
7 review of contracts prior to signing; (4) not making any
8 immigration-related threats; (5) modifying language on criminal
9 prosecution; (5) representing that LBN has no present intent to
10 collect certain debt from program participants or their sponsors;
11 (6) removing GPS monitors in a timely manner for pregnancy or
12 medical necessity, or upon termination of immigration
13 proceedings; (7) not requiring leg-affixed GPS monitors for new
14 program participants with bonds of less than \$7,500 (impacting
15 approximately 19% of program participants); (8) transitioning to
16 technologically upgraded ankle monitors that are less intrusive
17 and do not require program participants to stay in place to
18 charge the monitors, by December 31, 2020, at the latest; and (9)
19 using commercially reasonable efforts to transition away from use
20 of ankle monitors altogether and to instead use wrist bracelet
21 monitors or other similarly less intrusive monitors, such as
22 cellular telephones or periodic check-ins, by December 31, 2021,
23 at the latest. Further details as to these business practices
24 and any exceptions are set forth in the Settlement Agreement.

25 11. Attorneys' Fees and Costs. Class Counsel is awarded
26 \$800,000 total in attorneys' fees and costs to be paid from the
27 Settlement Amount, but not the Cash Settlement Fund, in
28 accordance with the terms set forth in the Settlement Agreement

United States District Court
Northern District of California

1 and pursuant to the parties' representations during the hearing
2 on December 9, 2020.

3 12. Incentive Award. Plaintiffs are each awarded \$10,000 as
4 a service award to be paid from the Settlement Amount, but not
5 the Cash Settlement Fund, in accordance with the terms set forth
6 in the Agreement.

7 13. Settlement Administrator Costs. The Court approves the
8 payment to the Settlement Administrator of a total amount not to
9 exceed \$80,000, to be paid from the Settlement Amount, but not
10 the Cash Settlement Fund.

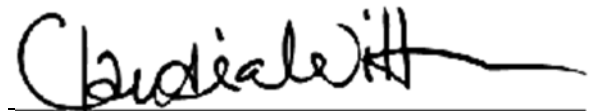
11 14. Judgment. The Court finds that there is no reason for
12 delay and directs the Clerk to enter judgment in accordance with
13 the terms of this Order.

14 15. Court's Jurisdiction. Without affecting the finality of
15 this Final Approval Order and Judgment, pursuant to the Parties'
16 request, the Court retains jurisdiction over this Action and the
17 Parties pursuant to the terms of the Agreement.

18 16. Status Report. Within thirty days of the date when cash
19 payments to Authorized Claimants are completed, or December 31,
20 2023, whichever comes first, Class Counsel shall file a status
21 report to the Court specifying the total amount paid to
22 Authorized Claimants and the total amount of uncashed checks that
23 will be paid to the approved Cy Pres Recipients.

24 IT IS SO ORDERED.

25 Dated: February 8, 2021



26 CLAUDIA WILKEN
27 United States District Judge
28