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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JUAN QUINTANILLA VASQUEZ, et al.,
Plaintiffs,
v.
LIBRE BY NEXUS, INC.,
Defendant.

Case No. 4:17-cv-00755-CW
REVISED [~~PROPOSED~~] ORDER
GRANTING PLAINTIFFS' MOTION
TO ENFORCE ORDER AND
SETTLEMENT

1 On July 28, 2021, this Court heard Plaintiffs' motion to
2 enforce the Court's Order Granting Final Approval of Settlement and
3 Granting Motion for Attorney Fees, Costs, and Service Awards,
4 Docket No. 184 (Order) and the parties' Confidential Settlement
5 Agreement and Release, Jason Rathod Decl., Ex. 1, Docket No. 143-1
6 (Settlement) in this class action. The Court reviewed all briefs
7 filed and argument made by the parties for this motion. Based on
8 this review and the findings below, the Court finds good cause to
9 GRANT the motion and ORDERS the relief set forth below.

10 FINDINGS:

11 1. In its Order, the Court retained jurisdiction to enforce
12 and effectuate the Settlement. The Court also incorporated the
13 terms of the Settlement into its Order.

14 2. Most of the terms of the Order and Settlement went into
15 effect on or before March 31, 2021. The Court previously found
16 that the injunctive relief required by the Order and Settlement,
17 "which will not be delayed or reduced as a result of LBN's
18 financial situation, is the most significant and important aspect
19 of the Settlement Class Members' recovery under the Settlement."
20 Order at 10.

21 3. Defendant Libre by Nexus (LBN) has violated numerous
22 terms of the Order and Settlement, including as follows:

- 23 a. Criminal prosecution language: LBN failed to change
24 its contracts to state that tampering with LBN's GPS
25 device "may result in criminal prosecution" until
26 Plaintiffs filed the present motion. Settlement at
27 19, § II(B) (1) (h); see also Order at 12.

- 1 b. Contract audio: LBN has failed to post a Spanish
2 audio version of the LBN contract on its website
3 that is accessible to all persons who visit the
4 website. See Order at 12; Settlement at 17, §
5 II(B)(1)(b).
- 6 c. Fee waiver program: LBN failed to post forms for
7 the required fee waiver program on its website until
8 Plaintiffs filed the present motion. See Settlement
9 at 19, § II(B)(1)(j).
- 10 d. Posting the LBN contract on LBN's website: LBN has
11 failed to post a copy of the LBN contract, which
12 consists of "all paperwork provided by LBN to or
13 signed by LBN program participants and/or sponsors,"
14 on its website. See Order at 12; Settlement at 18,
15 § II(B)(1)(c). Specifically, LBN has failed to post
16 on its website a copy of the sponsor contract
17 attached as Exhibit A to the participant contract,
18 and a copy of the Libre Payment Worksheet.
- 19 e. Settlement administration costs: LBN failed to pay
20 the Settlement Administrator the \$80,000 in
21 administration costs approved by the Court. See
22 Order at 13.

23 4. LBN's opposition to this motion and supporting
24 declaration also suggest that LBN is in violation of other terms of
25 the Order and Settlement, including the requirements to: (a)
26 provide \$1.53 million in debt relief to the Class, independent of
27 debt relief that LBN may have provided in other actions; (b)
28 provide \$150,000 minimum in annual fee waivers; (c) provide on-time

1 and consecutive-payment discounts; (d) implement the total payment
2 cap so that the sum of a participant's payments never exceeds the
3 face amount of the bond; (e) limit late fees; and (f) translate the
4 LBN contract into at least one language other than English and
5 Spanish.

6 5. Since March 30, 2021, Class Counsel have made repeated
7 requests in writing to LBN to come into compliance with the Order
8 and Settlement, notifying LBN that Plaintiffs would seek their fees
9 for enforcement, as expressly provided for by the Settlement, if
10 LBN did not address the violations. It is undisputed that LBN
11 failed to provide any response.

12 6. Because LBN has violated a number of terms of the Order
13 and Settlement, has failed to pay the Settlement Administrator as
14 required, and has made representations in its opposition and
15 supporting declaration that raise serious concerns about non-
16 compliance with other terms of the Order and Settlement, the Court
17 finds that LBN may be in violation of some or all of the remaining
18 terms of the Order and Settlement, and that there is good cause to
19 require the parties to take certain actions to effectuate the
20 Settlement going forward, as set forth below.

21 7. The Court finds that Plaintiffs are entitled to their
22 attorneys' fees and costs in connection with the present
23 enforcement motion under the terms of the Settlement. Plaintiffs
24 have shown that Defendant violated the Order and Settlement, as set
25 forth above, and are, therefore, the prevailing party with respect
26 to the present enforcement motion. The Court finds that an award
27 of \$34,142.60 in attorneys' fees and costs to Class Counsel for
28 their efforts in enforcing the Order and Settlement is fair and

1 reasonable. Defendant did not challenge the reasonableness of the
2 fees and costs in its opposition to the present enforcement motion,
3 and it therefore waived any objections to the same.

4 IT IS HEREBY ORDERED THAT:

5 1. Defendant LBN shall pay the \$80,000 in administration
6 costs approved by the Court within fourteen days of the date of
7 this order.

8 2. Defendant LBN shall pay \$34,142.60 in attorneys' fees and
9 costs to Class Counsel for their efforts in enforcing the Order and
10 Settlement. This amount shall be held in a trust account by the
11 Settlement Administrator, so that cash payments continue to be made
12 first to the Class, with distribution of fees and costs to Class
13 Counsel only after those payments to the Class.

14 3. Counsel for Defendant LBN shall answer each communication
15 from Class Counsel within one business day. The principals of
16 Defendant LBN shall provide their counsel with the information and
17 authority necessary to do so.

18 4. Defendant LBN shall, within seven days of the date of
19 this order, make accessible on its website to any person who visits
20 the website an audio version of the LBN contract in Spanish.

21 5. Defendant LBN shall, within one day of the date of this
22 order, remove all references to GPS devices in the LBN contract.
23 Program participants still wearing GPS devices attached to their
24 bodies shall be informed within seven days of the date of this
25 order, either by text message or by U.S. mail, as to how to arrange
26 to have them removed. Copies of these communications shall be
27 provided to Class Counsel.

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1 6. Defendant LBN shall, within fourteen days of the date of
2 this order, translate the LBN contract into any language for which
3 the percentage of participants who speak that language exceeds five
4 percent. Defendant LBN shall notify Class Counsel if it is not the
5 case that more than five percent of participants speak a language
6 other than English or Spanish. LBN shall make accessible on its
7 website to any person who visits the website a copy of the LBN
8 contract that has been translated into a language pursuant to the
9 five-percent requirement or otherwise. Defendant LBN shall modify
10 its website to state that it will provide translations of the LBN
11 contract into other languages upon request.

12 7. Defendant LBN shall, within fourteen days of the date of
13 this order, make accessible on its website to any person who visits
14 the website the sponsor contract attached as Exhibit A to the
15 participant contract, as well as the Libre Payment Worksheet, in
16 English, Spanish, Spanish audio, and any other language that is
17 spoken by more than five percent of participants.

18 8. Defendant LBN immediately shall remedy any other
19 violations of the Order and Settlement of which is it or should be
20 aware.

21 9. Defendant LBN shall provide proof of its compliance with
22 the terms of the Order and Settlement, as well as this order, by
23 submitting declarations and supporting documents, as follows:

- 24 a. Within seven days of the date of this order,
25 Defendant LBN shall file with the Court declarations
26 under penalty of perjury, signed by its principals,
27 along with contemporaneous business records or
28 verification from third-party accountants or both,

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sufficient to demonstrate its compliance with the Order and Settlement and this order.

b. The principals' declarations shall describe LBN's compliance, or plan to immediately come into compliance, on all terms, including the policies and practices LBN has implemented (and including supporting documents) to ensure that its employees: (i) do not make immigration-related threats verbally or in writing; (ii) use best efforts to ensure meaningful review of contracts by program participants and sponsors prior to signing, pursuant to the procedures detailed in the Settlement; (iii) no longer require bodily-attached GPS monitors for program participants under any circumstances, as LBN represents in its opposition and supporting declaration; and (iv) contact program participants by text or U.S. mail who are still wearing bodily-attached GPS monitors to inform them that LBN no longer requires bodily-attached GPS monitors as a condition of the LBN contract and to provide them with instructions as to how to have the bodily-attached GPS monitors removed.

c. The declarations shall also include a link to an updated website page that contains all of the additional documents required herein.

d. As supporting documents, the declarations shall attach: (i) a revised LBN contract, showing the corrections described above; (ii) a third-party

1 certification that the LBN contract has been
2 translated into Spanish by a court-certified
3 translator and into any other language required by
4 the Settlement; and (iii) client billing records,
5 notifications to clients, and any other documents
6 (redacted as needed for privacy) sufficient to show
7 (a) LBN's timely implementation of the \$1.53 million
8 debt relief for the Class in this action
9 (independent of debt relief that LBN may have
10 provided in other actions), (b) that the sum of each
11 participant's bills and payments to LBN has never
12 exceeded the bond amount, (c) that on-time and
13 consecutive-payment discounts were disclosed and
14 provided, (d) that late fee limits were disclosed
15 and implemented, (e) that clients were notified that
16 they may stop payments once they verify termination
17 of immigration proceedings, and (f) the
18 beneficiaries and amounts of fee waivers provided by
19 LBN to date (broken down by year). If LBN has taken
20 steps necessary to comply with the Order and
21 Settlement, these documents must exist, and their
22 production would not be unduly burdensome.

23 10. Defendant LBN shall provide ongoing documentation
24 sufficient to confirm its compliance with the terms of the Order
25 and Settlement requiring continuous or future compliance, as
26 follows:

- 27 a. By March 31, 2022, LBN shall provide records
28 sufficient to show it disseminated to program

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participants the full \$150,000 required for annual fee waivers.

- b. LBN shall comply with the benchmark and payment logistics previously proposed by Class Counsel for the scheduled cash relief to the Class (see Docket No. 174 at 14-15). The Court finds that implementing these logistics would help enforce and effectuate the Settlement. See Nanjing Elble Evtl. Prot. Tech. Co. v. RePET, Inc., No. ED CV 16-02030-VAP (SPx), 2018 U.S. Dist. LEXIS 221429, at *8 (C.D. Cal. Aug. 31, 2018) (“[T]he contract will be enforced if it is possible to reach a fair and just result even if, in the process, the court is required to fill in some gaps.”). Specifically:
 - i. To clarify the mechanics of II.A.1.c.ii in the Settlement, the “look-back” on December 1, 2021, will compare third quarter 2021 LBN revenue with third quarter 2019 LBN revenue (the Benchmark) to determine the percentage differential set forth in the Settlement that would trigger payment and determine the level of payment by LBN. The source materials to make this determination will be third quarter 2019 and 2021 financial statements for LBN prepared by its external accountants. Upon review of the source materials, counsel for LBN shall certify the following, with the first certification to be made on December 1, 2021:

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"I have reviewed the appropriate quarterly and annual financial statements for Libre by Nexus prepared by its external accountants and hereby certify in good faith and under penalty of perjury that revenue for Libre by Nexus, as compared to the Benchmark, stands at ___% [rounded to the nearest tenth]."

ii. The source material shall also be provided to Class Counsel on a confidential basis, along with the certification, on the date specified (e.g., beginning December 1, 2021) via email. Class Counsel shall have seven days to review the certification and source material and object if they deem appropriate through email to counsel for LBN. If Class Counsel do not object to the certification, payment (if triggered by the percentage differential in the certification) shall be made within three (3) business days by wire to the Settlement Administrator. If Class Counsel disagree with the certification made by LBN, counsel shall meet and confer in good faith within seven (7) days of the objection. If resolution of the disagreement is not reached at the meet-and-confer, the matter shall be brought to the undersigned for final resolution.

iii. In terms of the percentage differentials and corresponding payment obligations, counsel

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clarify that the percentages should be as follows:

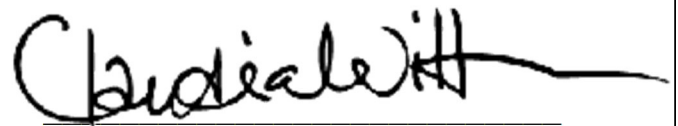
- 75%-79.9% \$1,000 per week
- 80%-89.9% \$10,000 per week
- 90%-99.9% \$25,000 per week
- 100%-110% \$100,000 per week

iv. Following the certification on December 1, 2021, subsequent certifications, with the same source material for the appropriate quarters, shall be made and provided on the following dates: March 1, 2022 (for the fourth quarter 2021 and Benchmark of fourth quarter 2019); June 1, 2022 (for the first quarter 2022 and Benchmark of first quarter 2019); September 1, 2022 (for the second quarter 2022 and Benchmark of second quarter 2019); December 1, 2022 (for the third quarter 2022 and Benchmark of third quarter 2019).

11. Defendant LBN shall pay interest and provide immediate refunds to the Class as appropriate if LBN did not timely comply with any of the terms of the Settlement with financial implication for the Class, including the provisions for debt relief, monthly payment discounts, total payment caps, and late fee limits.

IT IS SO ORDERED.

DATED: July 30, 2021



CLAUDIA WILKEN
United States District Judge