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16 TIREHUB, LLC

17 UNITED STATES DISTRICT COURT
18 EASTERN DISTRICT OF CALIFORNIA

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20
21 DONSHEA JONES, individually,
and on behalf of all others similarly
22 situated.

23 Plaintiff,

24 v.

25 TIREHUB, LLC, and DOES 1-100,
inclusive,

26 Defendants.
27
28

No. 2:21-cv-0564 DB

**JOINT REQUEST TO MODIFY
ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT
AND ORDER**

1 **JOINT REQUEST TO MODIFY ORDER GRANTING PRELIMINARY**
2 **APPROVAL OF CLASS ACTION SETTLEMENT**

3 Plaintiff Donshea Jones (“Plaintiff”), on behalf of himself individually and on
4 behalf of all members of the Plaintiff Class (“Plaintiffs”), and Defendant Tirehub LLC
5 (“Defendant”) (Plaintiffs and Defendant are collectively referred to as “the Parties”)
6 respectfully request that the Court modify the May 25, 2023 Order granting Plaintiff’s
7 Motion for Preliminary Approval of a Class Action Settlement (“Order”) (Doc. 65) to:
8 (1) correct the deadline for Defendant to provide the Settlement Administrator the class
9 list to be 10 business days, rather than 10 calendar days, from this Court’s Order; (2)
10 correct the deadline for Defendant to fund the gross settlement amount to be 21 calendar
11 days after the Effective Date of the Settlement rather than 21 calendar days after this
12 Court’s Order; and (3) approve the version of the Class Notice that the Parties jointly
13 approved prior to Plaintiff filing the Motion for Preliminary Approval of Class Action
14 Settlement rather than the Class Notice inadvertently attached to Plaintiff’s Motion for
15 Preliminary Approval of Class Action Settlement.

16 **BACKGROUND**

17 WHEREAS, the Parties executed a Wage and Hour Class Action Settlement
18 Agreement and Release of Claims (“Settlement Agreement”) in which the Parties
19 agreed to various deadlines relating to the administration of the Settlement. (Doc. 55-
20 1, Ex. A.)

21 WHEREAS, Paragraph 54 of the Settlement Agreement provides: “Within ten
22 (10) **business** days of the entry of an Order granting preliminary approval of the
23 Settlement and Class Notice, Defendant will provide the Settlement Administrator a
24 ‘Plaintiff Class List,’ which shall include the first and last name, the last known
25 addresses, the social security number, the number of Compensable Workweeks that
26 each member of the Plaintiff Class worked for Defendant during the Settlement Period,
27 and the number of Compensable Pay Periods that each PAGA Employee worked during
28 the PAGA Period.” (*Id.* at ¶ 54) (Emphasis added.)

1 WHEREAS, the Court’s Order set a Final Hearing Schedule requiring Defendant
2 to provide the Class List to the Settlement Administrator “[w]ithin 10 **calendar** days of
3 the date of this order. (Doc. 65 at p. 9:26-27.) (Emphasis added.)

4 WHEREAS, Paragraph 35 of the Settlement Agreement provides: “Within
5 **twenty-one (21) calendar days after the Effective Date**, Defendant shall transfer to
6 the Settlement Administrator an amount equal to the Gross Settlement Fund and the
7 employer’s share of payroll taxes.” (Doc. 55-1, Ex. A ¶ 35) (Emphasis added.)

8 WHEREAS, Paragraph 10 of the Settlement Agreement defines the Effective
9 Date to mean “61 days following the date on which the District Court’s Order granting
10 final approval of this Settlement Agreement (‘Final Approval Order’) becomes final.
11 The Superior (sic) Court’s Order ‘becomes final’ upon the last of the following to occur:

- 12 a. when the period for filing any appeal, writ, intervention, or other
13 proceeding opposing Settlement has elapsed without any appeal,
14 writ, intervention, or other proceeding having been filed;
- 15 b. when any appeal, writ, intervention, or other proceeding
16 opposing the Settlement has been dismissed finally and
conclusively with no right to pursue further remedies or relief; or
- 17 c. when any appeal, writ, intervention, or other proceeding has
upheld the Court’s Final Order and Judgment with no right to
pursue further remedies or relief.

17 (*Id.* at ¶ 32.)

18 WHEREAS, the Court’s Order setting a Final Hearing Schedule ordered
19 “Defendant to make payment of the Gross Settlement Amount to the Settlement
20 Administrator” “[w]ithin **21 calendar days of the date of this order.**” (Doc. 65 at p.
21 9:23-24.) (Emphasis added.)

22 WHEREAS, the Parties jointly approved submitting Exhibit A to this Joint
23 Request as the Class Notice to Plaintiff’s Motion for Preliminary Approval of Class
24 Action Settlement.

25 WHEREAS, Plaintiff’s counsel inadvertently submitted an erroneous version of
26 the Class Notice.

27 WHEREAS, the Court’s Order approved the erroneous version of the Class
28 Notice.

REASONS FOR MODIFYING THE ORDER

1
2 First, the Parties respectfully request that the Court modify its Order to correct
3 the deadline for Defendant to provide the Settlement Administrator the class list to be
4 10 business days, rather than 10 calendar days, from this Court’s Order. Given that the
5 Parties received notice of the Court’s Order on Friday May 26 before the Memorial Day
6 holiday, 10 business days would place this deadline on **June 12, 2023**, whereas 10
7 calendar days would place this deadline on **June 5, 2023**. Because the Settlement
8 Agreement provides Defendant a release through the date of the Court’s Order (Doc.
9 55-1, Ex. A ¶ 13), Defendant must prepare a settlement list with the number of
10 workweeks and pay periods the Plaintiff Class and PAGA Employees worked through
11 May 26, 2023. Defendant is unable to do so by June 5, 2023.

12 Second, the Parties respectfully request that the Court modify its Order to correct
13 the deadline for Defendant to fund the Gross Settlement Amount to be 21 calendar days
14 after the Effective Date of the Settlement rather than 21 calendar days after this Court’s
15 Order. It is unlikely that the Settlement Administrator will have set up an escrow
16 account within 21 calendar days of the Court’s Order. It is also unlikely that the
17 Settlement Administrator will have calculated the payroll taxes Defendant must provide
18 when funding the Gross Settlement Amount within 21 calendar days of the Court’s
19 Order. Moreover, the Parties’ Settlement Agreement provides that Defendant is only
20 obligated to fund the Gross Settlement Amount upon the Effective Date, which is
21 contingent upon this Court granting final approval of the class action settlement and the
22 exhaustion of any appeals (amongst other events) that may affect the finality of this
23 class action settlement. (Doc. 55-1, Ex. A ¶¶ 32, 35.) Further, the Settlement
24 Agreement reflects the Parties’ meeting of the minds with respect to timing of the
25 settlement payment, and conditions that must be satisfied before funding obligations are
26 triggered.

27 Last, the Parties respectfully request that the Court approve the Class Notice
28 attached hereto as Exhibit A, which the Parties mutually approve.

1 The Parties agree that modifying the Court's Order to be consistent with the
2 terms of the Settlement Agreement and the requested modifications do not prejudice
3 any party, including the Plaintiff Class, and rather, doing so would alleviate the
4 prejudice resulting from additional burdens and shortened timeline not contemplated
5 by the Parties when the settlement was reached.

6
7 Dated: June 2, 2023

8 /s/ Penny Chen
9 EUGENE RYU
10 PENNY CHEN
11 ALISON HAMER
12 PAUL SUH
13 K&L GATES, LLP
14 Attorneys for Defendant
15 TIREHUB, LLC

16
17 Dated: June 2, 2023

18 /s/ Laura Van Note
19 SCOTT EDWARD COLE
20 LAURA GRACE VAN NOTE
21 COLE & VAN NOTE
22 Attorneys for Plaintiff
23 DONSHEA JONES

24 Pursuant to Local Rule 131, I attest that concurrence in the filing of this document
25 has been obtained from each of the other signatories who are listed on the signature
26 pages.

27
28 Dated: June 2, 2023

/s/ Penny Chen
PENNY CHEN

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ORDER

FOR GOOD CAUSE SHOWN, and based on the Parties’ Joint Request to Modify Order Granting Preliminary Approval of Class Settlement, it is hereby ORDERED that the May 25, 2023 Order granting Plaintiff’s Motion for Preliminary Approval of a Class Action Settlement (“Order”) is hereby modified as follows:

1. The timeline on page 9 of the Order shall hereby be modified to the following:

Defendant to make payment of the Gross Settlement Amount to the Settlement Administrator.	Within 21 calendar days of the Effective Date of the Settlement.
Defendant to provide Class List to the Settlement Administrator.	Within 10 business days of the Court providing notice of its May 25, 2023 Order on May 26, 2023.

2. The Court approves, as to form and content, the Class Action Notice attached to the Joint Request to Modify Order Granting Preliminary Approval of Class Settlement as Exhibit A.

Dated: June 2, 2023



DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

DLB:6
DB\orders\orders.consent\jones0564.stip.mod.approv.ord