

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 JUAN QUINTANILLA VASQUEZ, GABRIELA
4 PERDOMO ORTIZ, VICTOR HUGO
5 CATALAN MOLINA, and KEVIN CALDERON,
individually and on behalf of all others similarly
situated,

6 Plaintiff,

7 v.

8 LIBRE BY NEXUS, INC. And JOHN DOES
9 1-50,

10 Defendants.

Case No. 4:17-cv-00755-CW

**DECLARATION OF JENNIFER M.
KEOUGH REGARDING NOTICE
ADMINISTRATION**

11 I, Jennifer M. Keough, declare and state as follows:

12 **INTRODUCTION**

13 1. I am the Chief Executive Officer of JND Legal Administration (“JND”). JND is
14 a legal administration service provider with its headquarters in Seattle, Washington. JND has
15 extensive experience with all aspects of legal administration and has administered settlements in
16 hundreds of class actions.

17 2. JND is serving as the Settlement Administrator¹ in the above-captioned litigation
18 (“Action”), as ordered by the Court in its Preliminary Approval and Provisional Class
19 Certification Order; Order Granting Motion to File Fourth Amended Complaint, dated
20 July 31, 2020 (“Order”). This Declaration is based on my personal knowledge and information
21

22 _____
23 ¹ Capitalized terms used and not otherwise defined herein shall have the meanings given such
terms in the Confidential Settlement Agreement and Release.

1 provided to me by experienced JND employees and, if called on to do so, I could and would
2 testify competently thereto.

3 **CLASS MEMBER DATA**

4 3. On August 14, 2020, Defendants uploaded a spreadsheet containing phone
5 numbers for program participants and their sponsors to a secure Sharefile folder. JND
6 temporarily downloaded the spreadsheet for the purpose of effecting notice pursuant to E.2. of
7 the Confidential Settlement Agreement and Release (“Agreement”). The spreadsheet contained
8 contact numbers for 23,477 pairs of program participants and sponsors, for a total of
9 46,954 contact numbers. Prior to commencing the Text Message Notice campaign, JND
10 reviewed the data and determined that for 22,233 records, the contact numbers provided for the
11 participant and the sponsor were the same, and that of the 24,721 remaining numbers, 1,714
12 were duplicative, leaving 23,007 unique phone numbers.

13 **TEXT MESSAGE NOTICE**

14 4. On August 31, 2020, JND caused the Text Message Notice to be sent in both
15 English and Spanish to the 23,007 unique phone numbers. The Text Message Notice directed
16 Class Members to the Settlement Website. Example Text Message Notices in both English and
17 Spanish are attached hereto as **Exhibit A**.

18 5. The initial English Text Message Notice was successfully delivered to
19 19,382 unique phone numbers, and the initial Spanish Text Message Notice was successfully
20 delivered to 19,386 unique phone numbers. On September 3, 2020 JND made a second
21 attempt to send the Text Message Notice to those unique phone numbers that were not
22 successfully delivered, resulting in successful delivery of 77 additional English Text Message
23
24

1 Notices and 74 additional Spanish Text Message Notices. On September 8, 2020 made a third
2 attempt to send the remaining unique phone numbers, resulting in 59 English and 58 Spanish
3 additional successfully deliveries. In total, Text Message Notices were successfully delivered
4 to 19,518 unique phone numbers, representing 20,991 Settlement Class Members.

5 **POSTCARD NOTICE**

6 6. On September 10, 2020, Defendants uploaded a spreadsheet containing mailing
7 information for the 3,791 contact records to whom the Text Message Notice had not been
8 successfully delivered following completion of the second round of Text Message Notices.
9 JND temporarily downloaded the spreadsheet for the purpose of effecting notice pursuant to
10 E.3. of the Agreement. After removing records to which the Text Message Notice had been
11 successfully delivered as part of the third round of Text Message Notices, JND parsed the
12 mailing data and identified 3,706 unique Settlement Class Members, comprising
13 3,115 participant/sponsors – where the participant and sponsor were the same – 408 participant
14 records, and 183 sponsor records.

15 7. On September 14, 2020, JND caused the Postcard Notice to be mailed via USPS
16 first-class mail to the 3,706 Settlement Class Members to whom the Text Message Notice had
17 not been successfully delivered. A representative sample of the Postcard Notice is attached
18 hereto as **Exhibit B**.

19 8. As of the date of this Declaration, JND has tracked 694 Postcard Notices that
20 were returned to JND as undeliverable. JND has re-mailed 27 Postcard Notices to a forwarding
21 address provided by the USPS, and conducted advance address research through TransUnion
22 for the remaining Postcard Notices, which returned updated address information for 62 Class
23

1 Members. JND promptly re-mailed the Postcard Notice to the new addresses. Of the Postcard
2 Notices forwarded or re-mailed in this manner, 15 have been returned as undeliverable.

3 9. In total, as of the date of this Declaration, 3,092 were mailed a Postcard Notice
4 that was not returned as undeliverable.

5 **CONFIDENTIALITY OF CLASS MEMBER INFORMATION**

6 10. In compliance with E.1 and E.3 of the Agreement, the spreadsheets provided to
7 JND for the purpose of sending the Text Message Notice and the Postcard Notice, as well all
8 files generated for the purpose of sending the notices, were immediately deleted following
9 completion of the respective notice campaigns. In order to process returned Postcard Notices,
10 JND has captured the mailing information from the returned Postcard Notice, then researched
11 this mailing information and re-mailed the Postcard Notice where a new address was found,
12 following which the mailing information was deleted. Although a database was established as
13 part of this administration to assist with tracking the progress of the direct notice campaigns, at
14 no time was any of contact information provided for the purpose of effecting notice loaded to
15 the database.

16 **PUBLICATION NOTICE**

17 11. Pursuant to the Notice Plan JND placed a summary notice of the settlement in
18 Spanish in the following periodicals:

- 19 a. *La Opinion*, published on September 3, 2020;
20 b. *El Sol*, published on August 29, 2020; and
21 c. *El Mundo*, published on September 3, 2020
22
23
24

SUPPORTING DOCUMENTATION

21. The Settlement Website included a secure portal where Settlement Class Members could securely submit qualifying information and supporting documentation to the Settlement Administrator.

22. As of the date of this Declaration, JND has received supporting documentation in the form of an I-391 Form from one Settlement Class Member.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 9, 2020, at Seattle, Washington.

By: 

Jennifer M. Keough

Exhibit A



(888) 383-0352 >

Text Message
Wed, Sep 2, 14:35

This message is authorized by the U.S. District Court for the N.D. of CA in Vasquez v. Libre by Nexus, Inc., No. 4:17-cv-00755-CW. IF YOU PAID LIBRE BY NEXUS FOR RELEASE FROM IMMIGRATION DETENTION, AS A CLIENT OR SPONSOR, YOU MAY BE ENTITLED TO A PAYMENT OR OTHER RELIEF FROM A CLASS ACTION SETTLEMENT. YOUR RIGHTS MAY BE AFFECTED. CLICK HERE FOR MORE INFORMATION.
WWW.LBNSETTLEMENT.COM

Este mensaje está autorizado por el Tribunal de Distrito de los EE. UU. en el distrito norte de California, en el caso Vasquez

Text Message





(888) 383-0352 >

WWW.LBNSETTLEMENT.COM

Este mensaje está autorizado por el Tribunal de Distrito de los EE. UU. en el distrito norte de California, en el caso Vasquez contra Libre by Nexus, Inc., Nro. 4:17-cv-00755-CW. SI USTED PAGÓ A LIBRE BY NEXUS POR UNA LIBERACIÓN DE DETENCIÓN POR MOTIVOS DE INMIGRACIÓN, COMO CLIENTE O PATROCINADOR, USTED PUEDE TENER DERECHO A UN PAGO U OTRA FORMA DE COMPENSACIÓN PROCEDENTE DE UN ACUERDO DE DEMANDA COLECTIVA. SUS DERECHOS PUEDEN VERSE AFECTADOS. HAGA CLIC AQUÍ PARA MÁS INFORMACIÓN.

WWW.LBNSETTLEMENT.COM



Text Message 



Exhibit B

Important Notice about a Class Action Lawsuit

*Información Importante Sobre
Una Acción de Clase*

If you have made a payment to Libre by Nexus, or someone made a payment for you, a class action lawsuit may affect your rights.

Si usted ha hecho un pago a Libre by Nexus, o alguien ha hecho un pago para usted, una demanda colectiva puede afectar sus derechos.

Vasquez v. Libre by Nexus
c/o JND Legal Administration
P.O. Box 91226
Seattle, WA 98111



Postal Service: Please do not mark barcode

**YOU MAY BE A CLASS MEMBER ENTITLED TO PAYMENT OR RELIEF
PUEDE SER MIEMBRO DE CLASE CON DERECHO A PAGO O REMEDIO**

(para información en español visite el sitio web o llame al número de teléfono gratuito abajo)

What is the lawsuit about? The name of the lawsuit is *Vasquez et al. v. Libre by Nexus, Inc.*, Case No. 4:17-cv-00755-CW, pending in the U.S. District Court for the Northern District of California. The lawsuit alleges Libre by Nexus (LBN) deceived consumers into believing, among other things, that LBN was their only option to leave detention, that the financial terms were manageable, that LBN could return them to detention, and that wearing an LBN ankle “bracelet” would not be onerous, when in fact the terms of LBN’s loans are onerous and exploitative. LBN denies all wrongdoing. **The Court has not decided who is right.**

You received this notice because LBN’s records indicate you may be a Class Member. You are included in the Settlement Class if you are an LBN program participant or sponsor who paid, or caused to be paid on your behalf, any fee to LBN. The detailed Class and Subclass descriptions are available at the website below.

What are your options? If you are a Class Member, you must choose whether to stay in the Settlement Class. If you stay in the Settlement Class, and money or benefits are obtained, you will be entitled to receive any payments or benefits for which are eligible. You will be bound by all orders and judgments of the Court, whether favorable or not, and you won’t be able to sue LBN for the claims at issue in this case. If you want to stay in the Settlement Class, you do not have to do anything now EXCEPT, to receive a payment, you must have already submitted or now timely submit the participant’s I-391 (Notice of Immigration Bond Cancelled). Please see the website or call the toll-free number below for details.

To exclude yourself from the lawsuit, you must submit an exclusion request online or by mail. Instructions for doing so can be found at the website or by calling the toll-free number below. You must submit your exclusion request by October 26, 2020. If you exclude yourself, you cannot get any money or benefits from this lawsuit, but you will not be bound by any orders or judgments in this case. If you do not request exclusion, you may (but do not have to) enter an appearance in the Court through your own counsel.

DETAILED INFORMATION AT / INFORMACIÓN DETALLADA EN:

www.LBNsettlement.com

1-888-383-0352

Exhibit C

Los Ángeles Comunidad

Se aprovechan de ataque a ambulante para robar donaciones

La comunidad apoyó con fondos después de que fue asaltado pero un hombre habría huído con el dinero

Araceli Martínez-Ortega
araceli.martinez@laopinion.com

Alberto Cruz, un vendedor ambulante, nunca imaginó que un hombre que apenas conocía fuera a utilizar la desgracia que sufrió al ser asaltado para recolectar dinero a través del sitio GoFundMe y desaparecer con más de 6,000 dólares.

“Lo conocía realmente de vista y creí que quería ayudarme. Nunca pensé que se fuera aprovechar de mi historia para robarle a la gente que generosamente aportó sus donativos para que me recuperara del asalto que sufrí”, dice Alberto.

Todo comenzó cuando fue atracado hace como un mes y medio en su puesto de venta ambulante en la ciudad de Stockton en el norte de California, a donde viaja a diario por alrededor de 45 minutos, desde Sacramento para ganarse la vida.

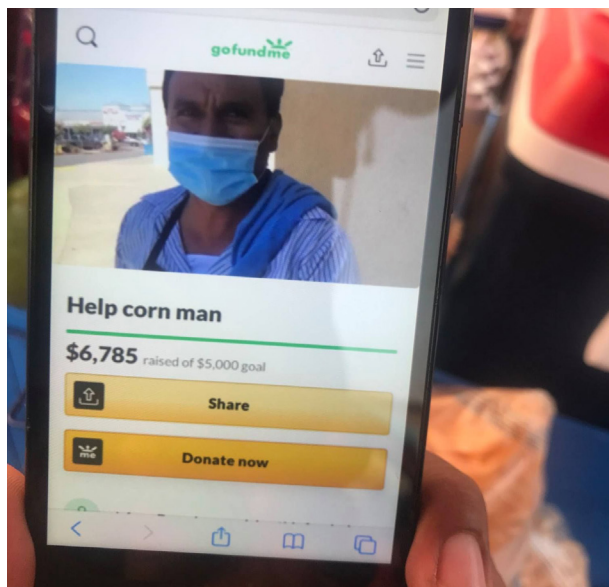
“Hace como un año vine de México y desde entonces estoy vendiendo raspados, elotes, churros y mangos”, cuenta Alberto, de 47 años de edad.

El inmigrante de Puebla, México, se coloca frente a la tienda Burlington de Stockton y ahí vende sus productos.

No recuerda exactamente la fecha, pero calcula que fue como a las dos de la tarde cuando llegaron unos asaltantes a robarle la venta del día.

“No los alcancé a distinguir porque me arrojaron gases a los ojos”, cuenta.

Todavía sin poder ver bien, se acercó al agente de seguridad de la tienda Burlington para contarle lo que había pasado. El empleado y él se



Así se veía la cuenta que se abrió en GoFundMe para recaudar fondos para Alberto Cruz. / CORTESÍA: LUIS MAGAÑA.

conocían de ‘hola, cómo estás’, pero nada más; y a veces, el inmigrante lo ayudaba comprándole el almuerzo.

“Me decía que no traía dinero, y yo le pagaba un burrito para que comiera. También le regalaba un mango, un elote, lo que él quisiera”, narra.

Cuando se enteró del asalto, el agente de seguridad se ofreció a abrirle una cuenta de GoFundMe para ayudarlo a recuperar las ventas robadas.

“Hasta me tomó fotos y un video donde yo daba las gracias por la ayuda que me pudieran dar”, dice.

Pero para abrir la cuenta en GoFundMe, el individuo le dijo al inmigrante que ocupaba \$150 ya que eso era el cobro de apertura. Alberto, desconocedor de cómo funciona el sitio online de recaudación de fondos, le entregó el dinero.

Al poco tiempo, el falso

buen samaritano dejó de ir a la tienda. Sin embargo, algunos de los clientes de Alberto le mostraron la página de GoFundMe donde se podía ver que se habían recaudado 6,785 dólares de una meta de 5,000 dólares para apoyarlo.

Para ese entonces, la cuenta ya estaba cerrada y el individuo ya había retirado el dinero. “Cuando lo empecé a buscar, ya no me dio la cara. Se desapareció. No volví a saber nada de él”.

Alberto añade que lo fue a buscar a la tienda donde trabajaba, y de manera anónima le informaron que el defraudador ya no laboraba ahí y lo describieron como una persona peligrosa.

El inmigrante se siente muy molesto y quiso contar su historia para que no le vuelva a pasar a nadie que utilicen su desgracia para sacar dinero.

“Este hombre es un un des-



Tiroteo afuera de un hospital en Baldwin Park

Una persona resultó herida de bala ayer a las 8:00 a.m., afuera del Centro Médico Kaiser Permanente Baldwin Park. No hubo actividad peligrosa dentro del lugar pero aún se busca al sospechoso.



Alberto Cruz llegó hace poco a Estados Unidos y se mantiene con la venta de elotes y raspados.

carado. Lo siento mucho por la gente de la que se aprovechó. Ese dinero no le va a durar toda la vida. A mí no me va a faltar. Yo estoy acostumbrado a trabajar duro con el sudor de mi frente”.

Al preguntarle por qué no lo reporta a la policía, dice que ya tiene demasiado estrés con todo lo que ha pasado cómo para seguir

peleando.

“Se lo vamos a dejar a Dios. Ya con que la gente venga a comprarme, con eso me ayudan mucho”.

Luis Magaña, líder comunitario del área de Stockton, área donde ocurrieron los hechos, afirma que si bien Alberto se rehusó a poner una denuncia a la policía, pide a las autoridades investigar y

“Este hombre es un un descarado. Lo siento mucho por la gente de la que se aprovechó.

Ese dinero no le va a durar toda la vida. A mí no me va a faltar. Yo estoy acostumbrado a trabajar duro.

Alberto Cruz, vendedor

buscar a las personas sin escrúpulos que se aprovechan de los inmigrantes que se ganan la vida honestamente.

La Opinión está a la espera de una respuesta de GoFundMe sobre cómo evitar que cualquiera pida donaciones a nombre de una persona, y luego desaparezca con los fondos.

AVISO LEGAL

SI PARTICIPÓ EN EL PROGRAMA LIBRE BY NEXUS, USTED PUEDE SER UN MIEMBRO DEL GRUPO DE DEMANDANTES

¿De qué trata la demanda? El nombre de la demanda es *Vazquez et al. v. Libre by Nexus, Inc.*, Caso N.º 4:17-cv-00755-CW, en trámite ante el Tribunal de Distrito de EE. UU. para el Distrito Norte de California. En la demanda, se alega que Libre by Nexus (LBN) engañó a los consumidores haciéndoles creer, entre otras cosas, que LBN era su única opción para dejar de estar detenidos, que los términos financieros eran manejables, que LBN podría hacer que vuelvan a estar detenidos y que usar una “tobillera” de LBN no era costoso, cuando de hecho los términos de los préstamos de LBN son onerosos y abusivos. LBN niega todo acto ilícito. **El Tribunal no ha decidido quién tiene la razón.**

¿Soy un miembro del Grupo de Demandantes? Usted está incluido en el Grupo de la Conciliación si es participante o patrocinador del programa de LBN y pagó, o hizo que alguien pague en su nombre, algún monto a LBN. Los Grupos y los Subgrupos se describen en detalle en el sitio web que se indica más adelante.

¿Qué opciones tiene? Si es Miembro del Grupo de Demandantes, debe decidir si permanecerá en el Grupo de la Conciliación. Si permanece en el Grupo de la Conciliación, y se obtienen dinero o beneficios, usted tendrá derecho a recibir los pagos o beneficios respecto de los cuales sea elegible. Estará obligado por todas las resoluciones y sentencias del Tribunal, sean o no favorables, y no podrá demandar a LBN por los reclamos sobre los que trata este caso. **Si desea permanecer en el Grupo de la Conciliación, no es necesario que haga nada, con la EXCEPCIÓN de que, para poder cobrar, debe haber presentado o deberá presentar ahora el I-391 del participante (Aviso de cancelación de fianza de inmigración).** Para obtener información detallada, visite nuestro sitio web o llame al número gratuito que se indica más adelante.

Para excluirse de la demanda, debe presentar una solicitud de exclusión en línea o por correo. Puede obtener las instrucciones para hacerlo en el sitio web o llamando al número gratuito que se indica más adelante. Debe presentar la solicitud de exclusión a más tardar el 25 de octubre de 2020. Si se excluye, no podrá recibir ningún pago ni beneficio de esta demanda, pero no estará obligado por ninguna resolución o sentencia en este caso. Si no solicita la exclusión, podrá (pero no estará obligado a hacerlo) registrar su comparecencia ante el Tribunal a través de su propio abogado.

INFORMACIÓN DETALLADA EN: www.LBNsettlement.com • 1-888-383-0352

Ricky y Mau aún no serán padres

El lanzamiento de “Papás” fue muy especial, ya que los hermanos Montaner pidieron a sus respectivas parejas que anunciaran que “serían papás”... ¡pero de una canción!

Diana García
Corresponsal en la Cd. de México

Durante todo este tiempo de la pandemia de Coronavirus, Ricky y Mau han aprovechado el confinamiento para estar más unidos a su familia y también para reinventarse en su música, por ello, consideran que el éxito de su sencillo “Papás” se debe al tiempo que se tomaron para empezar de cero y buscar qué era lo que querían proyectar con sus canciones.

“Cuando empezamos este álbum, queríamos romper todo tipo de esquemas, uno de ellos, haciendo un álbum (Refresh) que no tuviera colaboración, que hablara de cosas diferentes, sonidos diferentes, sabíamos que de alguna u otra manera, era empezar de cero. Esta cuarentena, ha servido como punto de partida para todos y para nosotros los artistas, para renovarnos artísticamente y conectarnos con nuestros fans a otro nivel”, indicó Mau, en exclusiva para La Voz.

El lanzamiento de “Papás” fue muy especial, ya que los hermanos Montaner pidieron a sus respectivas parejas que anunciaran que “serían papás”... ¡pero de una canción!, ya que ni ellos dos, ni su hermana Eva Luna, planean pronto, hacer abuelo a su padre Ricardo Montaner.

“Si me preguntas si alguno de noso-



Mau y Ricky tienen más de 4,6 millones de seguidores en Instagram y más de 2 millones de seguidores en Spotify. PRENSA DANNA

tros está embarazado o va a hacer abuelo a mi papá pronto, no; Eva Luna tampoco está embarazada”, agregó Ricky.

Este tiempo de cuarentena, no solo le ha servido a Mau y Ricky para reinventarse en su música sino también para

unirse más su familia y dar un mensaje de paz a sus fans.

“Nosotros como familia decidimos tomar este tiempo como algo positivo para invertir en nosotros, para crecer, hemos tratado de inspirar a la gente a

CONÓZCALOS

Ricky y Mau

- Ricky y Mau nacieron en Venezuela
- Son hijos del cantautor Ricardo Montaner
- En el 2017 lanzaron Arte, su EP debut
- Han compuesto para Cristian Castro, Karol G, Thalía, Ricky Martín, Juanes entre otros

tomar esa decisión también e invertir el tiempo en la familia, esto puede llegar hacer una bendición hermosa”, puntualizó Ricky.

En “Papás” Mau y Ricky mezclan su característico estilo pop-urbano con influencias de la música “punk rock”, consiguiendo un sonido sorprendente, volviendo a demostrar que son de los artistas más innovadores en la escena musical urbana, marcando siempre tendencia.

El video de “Papás” fue dirigido por Stillzy en el Ricky interpreta al novio que conoce por primera vez a los padres de su chica. Mau interpreta al padre y a la madre de la novia, lo cual es muy innovador y gracioso.



Pedro dice que le tiene miedo a las cirugías, aunque se esté haciendo viejo. LA VOZ

Pedro Fernández asegura que 'le saca' a las cirugías

Diana García
Corresponsal en la Cd. de México

Luego de que Pedro Fernández fuera criticado en redes sociales por verse diferente del rostro, en un vivo, el cantante aclaró que no se ha sometido a ninguna cirugía.

“No me he hecho nada, créanme que si algún día me hago algo, se lo voy a decir, o ya me hice esto, pero todavía no, un día de estos me animo”, señaló el cantante jalisciense de 50 años de edad.

Aunque siempre ha sido muy reservado con su vida, en esta ocasión, Pedro quiso hablar a través de sus redes, para que sus fans sepan que está bien.

“Me estoy haciendo grande, me estoy haciendo viejo, y estoy cambiando, pero no me he hecho nada, un día de estos me estiro los cachetes o algo, todavía no me hago nada no me gustaría, soy un poco zacetón para esas cosas”, comentó.

Lo que sí dejó claro, es que quizá en un futuro si se opere los ojos para no usar lentes.

“Me voy a operar mis ojos, porque no veo”, puntualizó.

Vicente Fernández Jr., sale adelante gracias a su novia

Vicente Fernández Jr. agradeció a su pareja, el apoyo que le ha brindado en estas semanas, que ha sido atacado por su ex esposa.

Diana García
Corresponsal en la Cd. de México

El empresario Vicente Fernández agradeció a su novia Mariana, el apoyo que le ha brindado en estos días, en los que su aún esposa Karina Ortegón, le demanda el divorcio y lo acusa de violencia intrafamiliar, por lo que le aplicaron una orden de restricción para no acercarse a ella.

“La mayor razón para salir de este linchamiento virtual, eres tú mi vida. Gracias por el amor y el apoyo”, escribió Vicente.

El mensaje estuvo acompañado por una serie de fotos, en donde se le ve feliz al lado de su actual pareja Mariana González Padilla.

Vicente se refiere, no al apoyo que Mariana le dio durante su contagio de Covid-19, del que ya está totalmente recuperado, sino a las declaraciones de Karina Ortegón, quien ha revelado, que además de ser agresivo y acosarla, ha amenazado a su familia.

Habrà que recordar que fue Aylín Mujica, quien reveló el caso en un programa de Telemundo, desatando el enojo de Vicente Jr., quien la acusó de



Vicente Fernández Jr., enfrenta un duro divorcio con Karina Ortegón. LA VOZ

haber hablado de él discriminatoriamente por su incapacidad, sin embargo, lo dicho por la cubana, fue corroborado por Karina Ortegón, con quien Vicente se casó en agosto de 2017.

Al inicio de este 2020, la pareja aparentó una separación sin problemas, sin embargo, el proceso legal de divorcio, los ha llevado a hacer públicas sus versiones.

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RANCHO CIELO
Building Skills. Transforming Lives.

¡ESTAMOS ACEPTANDO APLICACIONES!
INSCRIBETE AHORA



Academia de Construcción



Carreras en Agricultura



Academia Culinaria

ENTRENAMIENTO VOCACIONAL GRATUITO PARA ELEGIR

- ▶ Diploma de Preparatoria Clases Pequeñas Recuperamiento de Créditos Escolares
- ▶ Programa de Empleo para Jóvenes (edades 18-24)
- ▶ Servicios de Apoyo Disponibles
 - Transportación
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Nacionales y Pases

Más profesionales podrían seguir siendo contratistas bajo las nuevas exenciones AB 5

Por Quinci LeGardye
California Black Media

Después de meses de protestas y duras negociaciones con representantes de diversas industrias, los legisladores de California han publicado una lista actualizada de profesionales que podrían quedar exentas de AB 5, la controvertida ley de reclasificación de trabajadores que entró en vigor el 1 de enero.

AB 2257, un nuevo proyecto de ley que revisa algunas secciones del Código Laboral afectadas por AB 5, eximirá a artistas, tasadores, representantes de seguros y entrenadores deportivos juveniles, permitiéndoles trabajar como contratistas independientes. Esto se suma a las exenciones anteriores hechas para músicos, escritores, fotógrafos, tutores, intérpretes y otras industrias.

AB 2257 cuenta con el res-

paldo de la asambleísta Lorena González (D-San Diego), autora de AB 5 y ha sido su principal defensora.

“Hemos utilizado el razonamiento en Dynamex, la jurisprudencia existente y todas las disposiciones de compensación de trabajadores y el código [Seguro de desempleo] desarrollado durante los últimos 40 años para tratar de crear un marco para el empleo en California. Confiamos en que [los contratistas independientes] legítimos podrán trabajar como tales”, dijo González en un tuit del 27 de agosto.

La asambleísta Christy Smith (D-Santa Clarita), coautora de AB 2257, dijo: “Estas aclaraciones a AB 5 crean vías adicionales específicas de la industria para que las personas trabajen de forma independiente y eviten abusos que perjudican a los trabajadores y las pequeñas empresas”.

Según AB 5, las empresas



Lorena González. Foto Wikipedia.

deben determinar si sus trabajadores son empleados de acuerdo con los criterios conocidos como la prueba “ABC”. Los trabajadores solo pueden ser clasificados como contratistas independientes si A) Su trabajo está libre del control de la entidad contratante B) Realizan un trabajo que está fuera del curso

normal de negocios de la entidad contratante, y C) Tienen un negocio independiente.

La AB 5 ha sido cuestionada por varias industrias desde que se presentó como proyecto de ley. Los conductores de cami-

ones ganaron una orden judicial que impidió que se hiciera cumplir la ley AB 5 para su industria el 16 de enero.

Recientemente, un juez de la Corte Superior de California dictaminó que las empresas de viajes compartidos Uber y Lyft deben clasificar a sus conductores como empleados. El juez luego detuvo la orden judicial luego de que las empresas amenazaran con dejar de operar en California.

Uber y Lyft también han financiado una medida de votación junto con otras empresas de transporte compartido y reparto que eximirían a las empresas de las restricciones AB 5 si los votantes la aprueban en noviembre.

Si el gobernador Newsom firma la ley AB 2257, entrará en vigor de inmediato.

Proyecto de ley para “salvar el periodismo local” en espera de la firma del gobernador Newsom



Asambleísta Blanca E. Rubio (D- Baldwin Park)

Antonio Ray Harvey
California Black Media

Con un voto de 69-4, el Senado aprobó el proyecto de ley de la Asamblea (AB) 323 el martes. Propone otorgar a los medios de comunicación étnicos, las publicaciones medianas y los periódicos un año más para buscar modelos de distribución alternativos y sostenibles que no involucren conductores contratados. Eso les permitiría cumplir con la controvertida ley laboral AB 5 del estado.

La AB 323, conocida como la “Ley para salvar el periodismo local”, que ahora está a la espera de la firma del gobernador, entraría en vigor el 1 de enero de 2023 si se firma.

La asambleísta Blanca Rubio (D- Baldwin Park) es la autora del proyecto de ley.

“AB 323 proporciona un puente para que nuestros periódicos locales continúen informando a los lectores y sus comunidades. Hoy el proyecto de ley se aprobó con un apoyo abrumador y se dirigirá al gobernador Newsom”, dijo Rubio a través de su cuenta de Twitter el 31 de agosto.

La AB 323 también requerirá que las agencias estatales contraten con medios de comunicación comunitarios y étnicos para promover sus campañas de concientización pública a fin de llegar a las comunidades desatendidas en todo el estado.

La AB 5 se promulgó para hacer cumplir un fallo de la Corte Suprema de California de 2018 comúnmente llamado “Ley Dynamex”. Originalmente, la legislación se centró principalmente en lo que algunos legisladores consideraban “abusos” por parte de grandes

empresas como Uber, Lyft y otras empresas de reparto de viajes compartidos y basadas en aplicaciones. Dicen que esas corporaciones dependen de una fuerza laboral de contratistas, pero no les brindan a esos trabajadores ningún beneficio laboral ni otras protecciones laborales exigidas por la ley de California.

En la cámara de la Asamblea antes de la votación en el piso, la asambleísta Lorena González (D-San Diego), quien fue la autora de AB 5 y votó “no” en AB 323, dio un testimonio apasionado.

“No puedo condonar ni apoyar un modelo de negocio insostenible que opera a expensas de los trabajadores con salarios bajos”, dijo González a sus colegas.

Pero los críticos dicen que la intención de AB 5 se perdió en su lenguaje y aplicación, alegando que lanzó una red demasiado amplia y que terminó perjudicando a algunos contratistas, incluidos artistas, dentistas, escritores, vendedores, músicos, traductores y otros. Esas son personas que generalmente prefieren la independencia y flexibilidad de ser autónomos o propietarios únicos, argumentan.

Desde que se aprobó la AB 5 hace aproximadamente un año, los legisladores han creado varias exclusiones para eximir a algunas de las categorías profesionales afectadas, lo que les permite continuar trabajando como contratistas independientes según la ley. Pero muchos siguen afectados.

En octubre de 2019, el gobernador Newsom firmó AB 170, una ley que otorgó a los periódicos de California una extensión de un año (hasta fines de 2020) para reclasificar a los conductores contratados que entregan sus periódicos como empleados W-2, o que aparezcan con una nueva forma de distribuir sus periódicos a los suscriptores.

AB 323 extiende esa fecha de expiración que actualmente exime a los transportistas de periódicos de las restricciones de AB 5 hasta fines de 2021. Hasta entonces, esas publicaciones no tendrán que cumplir con los criterios de tres partes, comúnmente conocido como la

Magic Johnson y sus socios recaudan \$325 millones en alivio por COVID-19 para empresas negras

Por NewsOne

En medio de la pandemia del COVID-19, la leyenda de la NBA Earvin “Magic” Johnson se ha centrado en apoyar a las empresas de propiedad de negros que se han visto significativamente afectadas por la crisis de salud pública. Según Black Enterprise, Johnson se asoció con Carver Federal Savings Bank y MBE Partners para la creación de un Programa de Protección de Cheques de Pago (PPP) diseñado para empresas propiedad de minorías y mujeres.

Los dueños de negocios negros han experimentado varias barreras cuando se trata de recibir ayuda federal. Un informe compilado por el Banco de la Reserva Federal de Nueva York reveló que solo el 20% de los préstamos PPP se destinaron a áreas que tenían una alta concentración de empresas de propiedad negra.

Entre los meses de febrero y abril, casi el 41% de las empresas propiedad de negros cerraron debido a problemas financieros derivados de la pan-



Earvin “Magic” Johnson. Foto de CNBC.

demia.

Johnson espera revertir la tendencia. Su compañía EquiTrust Life Insurance Co., MBE Partners y Carver Federal Savings Bank han asegurado un total de \$325 millones para otorgar préstamos para mujeres y negocios liderados por minorías, organizaciones sin fines de lucro y organizaciones religiosas.

“Cuando lanzamos el programa de préstamos APP de EquiTrust MBE en mayo, anticipábamos financiar \$100 millones en préstamos. No solo superamos ese umbral, sino que recibimos más de 21.000 solici-

tudes de pequeñas empresas que demuestran la necesidad de los \$325 millones”, dijo Johnson en un comunicado, según el medio de comunicación.

“Estos negocios son una parte vital de nuestra economía y esenciales para el crecimiento económico necesario para la recuperación de la pandemia. Tenemos la responsabilidad de garantizar una distribución equitativa del capital respaldado por el gobierno federal a las pequeñas empresas propiedad de minorías”.

Ha habido otros esfuerzos concertados para apoyar a las empresas de propiedad negra en tiempos de incertidumbre. A través de su Fundación BeyGOOD, Beyoncé se asoció con la NAACP para la creación de una campaña de subvenciones denominada Fondo de Impacto para Pequeñas Empresas de Propiedad Negra.

A través de la campaña, se otorgarán subvenciones de \$10,000 a empresas de propiedad de negros en Houston, Atlanta, Los Ángeles, Minneapolis y Nueva York que están al borde del cierre.

AVISO LEGAL

SI PARTICIPÓ EN EL PROGRAMA LIBRE BY NEXUS, USTED PUEDE SER UN MIEMBRO DEL GRUPO DE DEMANDANTES

¿De qué trata la demanda? El nombre de la demanda es *Vazquez et al. v. Libre by Nexus, Inc.*, Caso N.º 4:17-cv-00755-CW, en trámite ante el Tribunal de Distrito de EE. UU. para el Distrito Norte de California. En la demanda, se alega que Libre by Nexus (LBN) engañó a los consumidores haciéndoles creer, entre otras cosas, que LBN era su única opción para dejar de estar detenidos, que los términos financieros eran manejables, que LBN podría hacer que vuelvan a estar detenidos y que usar una “tobillera” de LBN no era costoso, cuando de hecho los términos de los préstamos de LBN son onerosos y abusivos. LBN niega todo acto ilícito. **El Tribunal no ha decidido quién tiene la razón.**

¿Soy un miembro del Grupo de Demandantes? Usted está incluido en el Grupo de la Conciliación si es participante o patrocinador del programa de LBN y pagó, o hizo que alguien pague en su nombre, algún monto a LBN. Los Grupos y los Subgrupos se describen en detalle en el sitio web que se indica más adelante.

¿Qué opciones tiene? Si es Miembro del Grupo de Demandantes, debe decidir si permanecerá en el Grupo de la Conciliación. Si permanece en el Grupo de la Conciliación, y se obtienen dinero o beneficios, usted tendrá derecho a recibir los pagos o beneficios respecto de los cuales sea elegible. Estará obligado por todas las resoluciones y sentencias del Tribunal, sean o no favorables, y no podrá demandar a LBN por los reclamos sobre los que trata este caso. **Si desea permanecer en el Grupo de la Conciliación, no es necesario que haga nada, con la EXCEPCIÓN de que, para poder cobrar, debe haber presentado o deberá presentar ahora el I-391 del participante (Aviso de cancelación de fianza de inmigración).** Para obtener información detallada, visite nuestro sitio web o llame al número gratuito que se indica más adelante.

Para excluirse de la demanda, debe presentar una solicitud de exclusión en línea o por correo. Puede obtener las instrucciones para hacerlo en el sitio web o llamando al número gratuito que se indica más adelante. Debe presentar la solicitud de exclusión a más tardar el 25 de octubre de 2020. Si se excluye, no podrá recibir ningún pago ni beneficio de esta demanda, pero no estará obligado por ninguna resolución o sentencia en este caso. Si no solicita la exclusión, podrá (pero no estará obligado a hacerlo) registrar su comparecencia ante el Tribunal a través de su propio abogado.

EL MUNDO

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Aceptamos manuscritos no solicitados pero serán devueltos si no vienen acompañados de un sobre que indique la procedencia real con nombre del que lo escribe y nos reservamos el derecho de re editar, y condensar las notas por razones de espacio o difamación.

prueba “ABC”, que el estado utiliza para determinar si los trabajadores son empleados o contratistas independientes.

Al ofrecer un amortiguador para los transportistas, AB 323 también tiene como objetivo fortalecer y estabilizar las organizaciones de noticias de la comunidad de California al tiempo que protege su capacidad para proporcionar a todos los californianos información importante sobre noticias y eventos en sus comunidades.

“Estamos viviendo tiempos de disturbios y cambios sin precedentes, y nunca ha sido mayor la necesidad de medios especializados que faciliten una mejor participación cívica y una mejor comunicación intercultural”, dijo Regina Brown Wilson, directora ejecutiva de California Black Media. “El liderazgo de la asambleísta Rubio y el apoyo inquebrantable de los coautores y partidarios de AB 323 hacen posible que nuestros medios continúen con su misión de informar mejor a nuestras comunidades”.

El proyecto de ley alienta al Departamento de Servicios Generales (DGS) a ser responsable de garantizar que las agencias estatales incluyan a las organizaciones de noticias locales en sus campañas de publicidad y conciencia pública. DGS es el gerente comercial de California y proporciona soluciones comerciales y de adquisiciones para agencias locales y estatales.

“La Primera Enmienda y nuestra prensa independiente son fundamentales para el intercambio abierto de diversas ideas y perspectivas. Mis colegas y yo traemos puntos de vista variados al Capitolio, pero como lo demuestra el abrumador apoyo bipartidista a AB 323, estamos unidos en nuestro apoyo a nuestros medios de comunicación locales y los ciudadanos a los que sirven”, dijo Rubio en una declaración escrita.



August 31, 2020

American Immigration Lawyers Association
1331 G Street NW, Suite 300
Washington, DC 20005

**RE: Publication Notice for Settlement in *Vasquez et al. v. Libre by Nexus, Inc.*
Case No. 4:17-cv-00755-CW**

Dear Sir/Madam:

JND Legal Administration ("JND") has been retained as Settlement Administrator in a class action lawsuit for the above-referenced action, pending in the U.S. District Court for the Northern District of California. Pursuant to the terms of the parties' Settlement Agreement, we are enclosing a copy of the Settlement Notice approved for publication. A Settlement Notice in Spanish is available on the settlement website at www.LBNSettlement.com.

If you have any questions, please feel free to contact us at 888-383-0352 or by email at info@LBNSettlement.com. For more information, you may also visit the settlement website at www.LBNSettlement.com.

Regards,

JND Legal Administration, Settlement Administrator

Enclosures: Settlement Notice



August 31, 2020

National Immigration Project of the
National Lawyers Guild
2201 Wisconsin Ave NW Ste 200
Washington, DC 20007

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Regards,

JND Legal Administration, Settlement Administrator

Enclosures: Settlement Notice

IF YOU PARTICIPATED IN THE LIBRE BY NEXUS PROGRAM, YOU MAY BE A CLASS MEMBER

(para información en español visite el sitio web o llame al número de teléfono gratuito abajo)

What is the lawsuit about? The name of the lawsuit is *Vasquez et al. v. Libre by Nexus, Inc.*, Case No. 4:17-cv-00755-CW, pending in the U.S. District Court for the Northern District of California. The lawsuit alleges Libre by Nexus (LBN) deceived consumers into believing, among other things, that LBN was their only option to leave detention, that the financial terms were manageable, that LBN could return them to detention, and that wearing an LBN ankle “bracelet” would not be onerous, when in fact the terms of LBN’s loans are onerous and exploitative. LBN denies all wrongdoing. **The Court has not decided who is right.**

Am I a Class Member? You are included in the Settlement Class if you are an LBN program participant or sponsor who paid, or caused to be paid on your behalf, any fee to LBN. The detailed Class and Subclass descriptions are available at the website below.

What are your options? If you are a Class Member, you must choose whether to stay in the Settlement Class. If you stay in the Settlement Class, and money or benefits

are obtained, you will be entitled to receive any payments or benefits for which you are eligible. You will be bound by all orders and judgments of the Court, whether favorable or not, and you won’t be able to sue LBN for the claims at issue in this case. **If you want to stay in the Settlement Class, you do not have to do anything now EXCEPT, to receive a payment, you must have already submitted or now timely submit the participant’s I-391 (Notice of Immigration Bond Cancelled).** Please see the website or call the toll-free number below for details.

To exclude yourself from the lawsuit, you must submit an exclusion request online or by mail. Instructions for doing so can be found at the website or by calling the toll-free number below. You must submit your exclusion request by October 25, 2020. If you exclude yourself, you cannot get any money or benefits from this lawsuit, but you will not be bound by any orders or judgments in this case. If you do not request exclusion, you may (but do not have to) enter an appearance in the Court through your own counsel.

Exhibit D

Exhibit D - Requests for Exclusion Received

Name
Julio David Mejia-Ayala
Alejandro Alarcon
Carlos Roberto Morales Portillo
Edwin Geovany Alvarenga-Serrano
Fequiere Edouard
Heriol Merizier
Jeremi Gonzalez Estrada
Marvin Balmorys Garcia-Salvador
Marvin Eusebio Garcia-Diaz
Yojana Marcelita Estrada Escalante

Exhibit E

 LEGAL AID
JUSTICE CENTER

Kelly P. Salzmann
Attorney

October 24, 2020

Vasquez et al. v. Libre by Nexus Settlement
c/o JND Legal Administration
P.O. Box 91226
Seattle, WA 98111

Dear Settlement Administrator,

Please find attached an objection with exhibits submitted on behalf of Oscar Ernesto Rivas Campos. Both Mr. Rivas Campos and I have electronically signed the document. Mr. Rivas Campos can be reached at the following address and phone number:

Oscar Ernesto Rivas Campos
c/o Kelly Salzmann
Legal Aid Justice Center
6066 Leesburg Pike, Suite 520
Falls Church, VA 22041
571-620-5260

Do not hesitate to reach out to me with any questions or concerns. Thank you very much for your assistance with this matter.

My best –



Kelly Salzmann

Cc: Oscar Ernesto Rivas Campos

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JUAN QUINTANILLA VASQUEZ,
GABRIELA PERDOMO ORTIZ, VICTOR
HUGO CATALAN MOLINA, and KEVIN
CALDERON, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

LIBRE BY NEXUS, INC. and JOHN DOES
1-50.

Defendants.

Case No.: 4:17-cv-00755-CW

OSCAR ERNESTO RIVAS CAMPOS'
LIMITED OBJECTION TO FINAL APPROVAL OF CLASS SETTLEMENT

I. Introduction

Oscar Ernesto Rivas Campos submits a limited objection to final approval of the Settlement Agreement (Agreement) because it and the Notice of Proposed Class Action Settlement and Final Fairness Hearing (Notice) are silent on whether defenses to contract enforcement, in particular fraud in the inducement and lack of contract formation, are waived. The problem, in brief, is that the Agreement is silent regarding class members' right to assert affirmative defenses should defendant Libre by Nexus ("LBN") or third parties—for example, debt buyers who have allegedly obtained rights to debt held by LBN—attempt to collect on that debt in the future. The Agreement and Notice make clear that affirmative "claims" and "lawsuits" are waived, however neither provide any notice regarding the impact of the Agreement on defenses.

By participating in the Settlement Class, Mr. Rivas Campos understands that he is giving up the right to file an individual lawsuit against LBN claiming return of money he has already paid – about \$11,000. He is not clear, however, whether he will be left without the ability to defend himself if LBN sues him for additional money by showing that LBN fraudulently induced him into signing a “Lease Agreement” that made it appear that LBN had a relationship with the “Agency” – or Immigration and Customs Enforcement (ICE) – that they did not have (Exhibit A). Cases like those of Mr. Rivas Campos are the subject of ongoing litigation following an Amended Rule to Show Cause filed by the State Corporation Commission in the Commonwealth of Virginia (Exhibit B). To prevent Mr. Rivas Campos and other members of the Settlement Class who may have valid defenses based on the individual facts of their cases from being able to fully defend themselves, particularly without any notice of that consequence in the Agreement or the Notice, would result in a fundamental unfairness that would leave Mr. Rivas Campos and members like him in the Settlement Class significantly worse off than before the Agreement.

The most troubling aspect of this entire situation is that Defendants’ counsel have been evasive about class members’ preservation of defenses, and in fact have refused to affirm that the Agreement preserves class members’ defenses. Counsel for the Plaintiffs have affirmed that defenses are preserved. Yet when Defendants’ counsel was asked to affirm the same, they refused to do so. Defendants’ position is highly problematic because if the Defendants file future¹ lawsuits against Settlement Class Members to enforce contracts and argue in those lawsuits that Settlement Class Members may not raise defenses to those lawsuits, then specific

¹LBN has stated that they have no present intention to engage in debt collection activities through external providers, however, by arguing that defenses to future contract enforcement are waived, appear to be preserving the future right to sue. It could also simply sell such accounts to a debt buyer.

and clear notice of this material term must have been provided to all potential class members in accordance with Fed. R. Civ. P. 23(e)(B). Furthermore, the current conflict between the Plaintiffs and Defendants about what their settlement actually means on this material fact proves that the Agreement, as written, cannot be approved.

Mr. Rivas Campos therefore respectfully asks that the Court include the following language in the final order of approval:

The Court specifically notes that this Agreement does not expressly waive any affirmative defense that any Settlement Class Member may raise in any future debt collection proceeding filed by Defendant against any Settlement Class Member. Accordingly, such affirmative defenses are not waived.

Inclusion of this language is consistent with the intent of the Plaintiffs, consistent with the language in the Notice that is limited only to the waiver of “lawsuits,” and would allow for final approval of the Agreement.

II. Mr. Rivas Campos’ Independent Grounds for a Limited Objection.

Mr. Rivas Campos is a class member in this case. The Agreement defines Settlement Class Members as “‘program participants’ and ‘sponsors’ who paid, or caused to be paid on their behalf, a fee to LBN.” Agreement, Dkt. 143-1, p.11. Mr. Rivas Campos is a program participant of and paid fees to LBN. Mr. Rivas Campos has not asked to be excluded from the class. Mr. Rivas Campos submits this objection in accordance with the Court’s order of July 31, 2020. Dkt. 144, p. 5. Mr. Rivas Campos can be reached through the offices of the Legal Aid Justice Center, 6066 Leesburg Pike, Suite 520; Falls Church, VA 22041.

A. Mr. Rivas Campos would have valid defenses to the contract if the Defendants sued him in the future for money additional to that already paid.

Mr. Rivas Campos was detained by ICE during the summer of 2017. Mr. Rivas Campos bond was set at \$25,000. His grandmother, who has since died, pulled together about \$7,000 to

send to LBN in order to start the process of getting him out of detention. Mr. Rivas Campos did not see or sign a contract before his release from detention or before his grandmother paid \$7,000 on his behalf. LBN did not inform Mr. Rivas Campos or his family that he would need to wear a GPS unit before he was released from detention. The LBN representative told Mr. Rivas Campos' grandmother that he would have to make monthly payments until he paid off his bond of \$25,000.

After his grandmother paid the initial \$7,000 and after he was released from detention, Mr. Rivas Campos was presented with a contract written only in English despite the fact that Mr. Rivas Campos speaks Spanish. The LBN representative inaccurately told Mr. Rivas Campos that LBN has a relationship with ICE and that if he didn't comply that they would report him to ICE. The LBN staff member's statement was supported by the page of the contract that Mr. Rivas Campos had to sign that had a third section for the "Agency." (Exhibit A)

The false representation that ICE was part of the transaction was materially significant to the transaction. Relying on and in fear of that threat, Mr. Rivas Campos signed the English-language contract. "A false representation of a material fact, constituting an inducement to the contract, on which the purchaser had a right to rely, is always ground for rescission of the contract." *Abi-Najm v. Concord Condominium, LLC*, 280 Va. 350, 362 (2010).

Furthermore, Exhibit A by its terms is a three-party contract necessarily requiring participation and approval of a government agency; such participation and approval never existed. Therefore, in addition to fraud in the inducement, a legal defense of a lack of contract formation also exists.

Mr. Rivas Campos has not paid to LBN the full amount of the bond - \$25,000. Should LBN decide to sue him for the additional money in the future, he would have valid arguments against any enforcement, including the affirmative defense of fraud and lack of formation.

B. The Settlement Agreement and the Notice of Proposed Class Action and Final Fairness Hearing are silent whether defenses to future contract enforcement are preserved.

The Agreement contains specific language that class members release “claims” against LBN if they do not opt out of the Settlement Class. Dkt. 143-1, p. 29 (“[E]ach Plaintiff and each Settlement Class Member who has not opted out of the Settlement Class releases, waives, and forever discharges LBN Releasees from any and all claims they have or may have against the LBN Releasees arising out of or relating in any way to any of the legal, factual, or other allegations made in the Action, or any legal theories that could have been raised based on the allegations of the Action, including without limitation allegations made in any version of the complaint filed in the Action, and any claim regarding the manner of Class Notice (the “Released LBN Claims”)) (emphasis added). The Agreement does not discuss defenses to contract enforcement.

The Notice reiterates that potential class members who do not opt-out of the Settlement Class will “be releasing [their] claims against LBN.” Dkt. 143-1, p. 90. It goes on to provide further clarification stating “[t]his generally means that you will not be able to file a lawsuit, continue prosecuting a lawsuit, or be a part of any other lawsuit against LBN regarding the allegations in the Action, as of the date of the final approval of the Settlement.” *Id.* (emphasis added). Finally, the Notice states that potential class members who timely request exclusion from the Settlement Class “will not be precluded from prosecuting any timely, individual claim

against LBN based on the conduct complained of in the Action.” *Id.* (emphasis added). Like the Agreement, the language makes clear only that affirmative claims or lawsuits against LBN are waived, leaving members of the Settlement Class to believe that defenses to contract enforcement would be preserved.

C. The Defendants do not agree with the Plaintiffs’ intention that defenses to contract enforcement are preserved by the Agreement.

Counsel for Mr. Rivas Campos reached out by e-mail to counsel for the Plaintiffs on August 18, 2020. (Exhibit C) (“In particular, we want to advise clients and potential clients about the impact of the settlement on defenses to potential future collection actions by Libre, but the settlement agreement and draft notice appear to be silent on whether affirmative defenses to possible future actions to enforce a contract (such as fraud in the inducement, illegality, or violation of public policy) are waived.”) In a follow up conversation held on September 9, 2020, counsel for the Plaintiffs informed counsel for Mr. Rivas Campos that the Agreement does not impact defenses to contract enforcement and they are, therefore, preserved. Counsel for the Plaintiffs also stated, however, that the Defendants did not agree with Counsel for the Plaintiffs. Instead Defendants are suggesting that defenses to future contract enforcement are waived by the Agreement. Defendants interpretation of the Agreement is not consistent with the language contained in the Agreement or with the explanations in the Notice.

D. The Notice does not provide sufficient notice of the terms of the Agreement if the Defendants interpretation that defenses to future contract enforcement are waived prevails.

Fed. R. Civ. P. 23(e)(B) provides that “[t]he court must direct notice [of a proposed settlement] in a reasonable manner to all class members who would be bound by the proposal.”

In the Ninth Circuit, this notice must “generally describe[] the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.” *Lane v. Facebook, Inc.*, 696 F.3d 811, 826 (9th Cir. 2012) (citing *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 962 (9th Cir. 2009)). This means the notice must “adequately apprise[] class members of all material terms of the settlement agreement.” *Id.* In addition, the notice should “fairly apprise the prospective members of the class . . . of the options that are open to them in connection with the proceedings.” *Wal-Mart Stores, Inc. V. Visa U.S.A., Inc.*, 396 F.3d 96, 114 (2d Cir. 2005) (quoting *Weinberg v. Kendrick*, 698 F. 2d 61, 70 (2d Cir. 1982)). The Ninth Circuit has used *Wal-mart*’s standard in applying Rule 23(e) further clarifying that the court should evaluate “what an average class member would have understood.” *Low v. Trump University, LLC*, 881 F.3d 1111, 1120 (9th Cir. 2018)). In summary, “[a]dequate notice is critical to court approval of a class settlement under Rule 23(e).” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1025 (9th Cir. 1998).

The Notice language only informs people that by obtaining relief under the Agreement, they “will not be able to file a lawsuit, continue prosecuting a lawsuit, or be a part of any other lawsuit.” Dkt. 143-1, p. 90. The Settlement Class members in this action have not, therefore, received adequate notice of the impact of the Agreement on possible defenses to future contract enforcement being waived if LBN brings a lawsuit against them in the future. There is no way that an average class member would understand that the Agreement would prevent him from defending himself if LBN sued him for more money in the future. It would be surprising that adequate notice that defenses are waived is present when the Plaintiffs disagree with the Defendants and believe that defenses are preserved. The Notice, therefore, does not and cannot describe with “sufficient detail” the “material elements” of the proposed Agreement. *See Lane*,

696 F.3d at 826. Because of this critical lack of notice, Settlement Class members are unable to make an informed decision on whether to exclude themselves from the Agreement, particularly if Defendant's view were to prevail. Any acceptance of the Agreement as the Defendants would like it to be construed, therefore, would constitute an uninformed acceptance by class members.

E. If the Agreement is interpreted to waive defenses to future contract enforcement, it will be a fundamentally unfair Agreement protecting some class members, but leaving thousands of class members, like Mr. Rivas Campos, worse off than they were before the settlement.

The Agreement makes clear that LBN has "no present intention to engage in debt collection activities for past due monthly recurring Program Payments through external providers as to any debts owed as of September 1, 2019." Dkt. 143-1, p. 19. The Agreement, however, does not, in any way, foreclose future debt collection activities, including through LBN filing lawsuits or, also of concern, selling the debt to a debt buyer. In fact, if the Agreement is interpreted to waive defenses to contract enforcement, it significantly facilitates LBN's ability to easily file and win lawsuits or sell the debt in the future to companies that would love to buy debt in which consumers could not defend themselves in lawsuits.

There are few people who would benefit from a release of claims that LBN has against them. The "Plaintiff Releasees," who benefit from a release from any and all claims that LBN may have against them are only "Plaintiffs and each Member of the Payment Subclasses who has fully paid their obligations to LBN and who has not opted out of the Settlement Class[.]" *Id.* at 10 (emphasis added). If defenses to contract enforcement are not preserved, the Agreement in effect would allow thousands of lawsuits to be filed in state courts across the nation and Settlement Class members would have no ability to raise valid defenses in those lawsuits because

of this Agreement. Further, Settlement Class members would have had no notice of the fact that they will not be able to defend themselves due to the silence of the Agreement and the Notice. Oddly, the only people who are protected from a future in which they would not be able to defend themselves in collection lawsuits are those people who have already fully paid LBN and in theory would not be sued by them anyway. This result would be fundamentally unfair in accordance with Fed. R. Civ. P. 23(e).

Fed. R. Civ. P. 23(e) “requires the district court to determine whether a proposed settlement is fundamentally fair, adequate, and reasonable.” *Hanlon*, 150 F.3d at 1026. Although that analysis often involves weighing the risks, costs, and potential outcome of future litigation, “different factors may predominate in different factual contexts.” *Turrisi v. Tuscon Elec. Power Co.*, 8 F.3d 1370, 1375-76 (9th Cir. 1993) (qualifying the standard for settlement approval articulated in *Officers for Justice v. Civil Serv. Comm’n of S.F.*, 688 F.2d 615 (9th Cir. 1982), *cert. denied*, 459 U.S. 1217 (1983)). One such factor is whether “the proposal treats class members equitably relative to each other,” Fed. R. Civ. P. 23(e)(2)(D), including “whether the scope of the release may affect class members in different ways[.]” Fed. R. Civ. P. 23(e)(2)(D) Advisory Committee's note.

Here, the scope of the Agreement’s releases affects class members in dramatically different ways. Class members who have paid in full receive release from the specter of any future litigation. But class members who have paid sometimes significant fees to LBN, but not in full, and have not opted out of the Settlement Class not only may be subject to future litigation but should Defendant’s interpretation control, not even be able to defend themselves in that litigation based on the specific facts about LBN’s actions in those individual cases. This result simply cannot be accepted.

F. The Court has jurisdiction over the interpretation of the Agreement.

Courts generally do not have the authority to direct a modification to a settlement agreement. *See Roe v. Frito-Lay, Inc.*, 2016 WL 4154850 (N.D. Cal 2016) (citing *Hanlon*, 150 F.3d at 1027 (“The Court considers the settlement as a whole, rather than its components, and lacks the authority to ‘delete, modify or substitute certain provisions.’”)). Courts, however, routinely retain jurisdiction over the interpretation of those agreements. *See, e.g., Free Range Content, Inc. v. Google, LLC*, 2019 U.S. Dist. LEXIS 47380 (N.D. Cal. 2019); Order Granting Final Approval of Class Action Settlement at 4, *Jacobson v. Persolve, LLC*, No. 5:14-cv-00735 (N.D. Cal. Dec. 14, 2016) (No. 156). Therefore, the Court has the authority to provide the relief requested by Mr. Rivas Campos without disapproving the settlement agreement by specifically and clearly interpreting the Agreement in a manner that is consistent with the Plaintiffs’ intention and the language of the Agreement and the Notice. It should then make that interpretation clear in its notice.

III. Conclusion

Mr. Rivas Campos respectfully asks this Court to include in the final order of approval its interpretation of the Agreement with the following language:

The Court specifically notes that this Agreement does not expressly waive any affirmative defense that any Settlement Class Member may raise in any future debt collection proceeding filed by Defendant against any Settlement Class Member. Accordingly, such affirmative defenses are not waived.

Inclusion of this language would be consistent with the intent of the Plaintiffs, would be consistent with the language in the Notice that is limited only to the waiver of “lawsuits,” and would allow for final approval of the Agreement.

If the Court declines to interpret in this manner, then Mr. Rivas Campos objects to approval of the Agreement as a whole as fundamentally unfair in accordance with Fed. R. Civ. P. 23(e) and would ask that this Court, therefore, not give the Agreement as it stands final approval.

Respectfully submitted,



Oscar Ernesto Rivas Campos

10/24/2020

Date



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Simon Y. Sandoval-Moshenberg
simon@justice4all.org
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Falls Church, Virginia 22041
Ph: (571) 620-5260
Fax: (703) 778-3454
Counsel for Oscar Ernesto Rivas Campos

CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2020, I sent the forgoing Limited Objection to Final Approval of Class Settlement by Federal Express to:

Vasquez et al. v. Libre by Nexus Settlement
c/o JND Legal Administration
P.O. Box 91226
Seattle, WA 98111



By: _____
Kelly Poff Salzmnn
LEGAL AID JUSTICE CENTER
6066 Leesburg Pike, Suite 520
Falls Church, VA 22041
Tel: 703-778-3450
Fax: 703-778-3454
Email: kelly@justice4all.org
Counsel for Plaintiff



LEASE AGREEMENT
(Lessor-Agency-Lessee)

THIS LEASE AGREEMENT (hereinafter "Lease," "Agreement" or "Lease Agreement"), dated 09/28/2017 by and between Libre by Nexus Inc. (hereinafter referred to as "Lessor"), and OSCAR ERNESTO RIVAS-CAMPOS (hereinafter referred to as "Lessee"), and _____ Agency has an interest in electronically monitoring individuals who are either required to be or have agreed to be tracked by electronic monitoring equipment.

- Lessee is an individual who is required to be or has consented to be tracked by electronic monitoring equipment.
- Lessor desires to lease to Lessee certain equipment as described in the "EQUIPMENT DESCRIPTION" Table below (hereinafter "Equipment"). Lessee desires to lease the aforementioned Equipment from Lessor.
- Lessee and Lessor have agreed to the terms of this Lease Agreement.
- In consideration of the covenants and promises contained herein and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

I. PRIMARY TERMS

<p>EQUIPMENT DESCRIPTION (the "Equipment") (CHECK ALL THAT APPLY)</p> <p><input checked="" type="checkbox"/> Tracking Device x 1 device(s) Charged at a daily rate of \$14 Per Day</p> <p><input checked="" type="checkbox"/> Security Deposit Option: Insurance @ .50 cents per day with a deductible in the event of loss @ \$50.00</p> <p>Notes: GPS IS REQUIRED PURSUANT TO THIS AGREEMENT AND IN CONSIDERATION OF COLLATERAL PROVIDED BY NEXUS PROGRAMS UNTIL SUCH TIME AS THE CASE IS COMPLETE OR THE NEXUS COLLATERAL IS REPLACED BY THE RESPONDENT.</p>	<p>LESSEE'S RECURRING PAYMENT (CHECK AND FILL OUT ALL THAT APPLY)</p> <p><input checked="" type="checkbox"/> Monthly Payments at \$14 per day to equal days per month for minimum of 30 days and until the Equipment is returned to Lessor.</p> <p>LESSEE'S PAYMENT AT SIGNING OF THIS AGREEMENT</p> <p>Advance Payments: \$ 420 covers 30 days Shipping UPS overnight \$ (\$50 per device) Other: Activation Fee \$ 460.00</p> <p>TOTAL\$ 880.00</p> <p>*If an exhibit and/or addendum is attached to this Agreement which further describes the Equipment or Lessee's payments, it shall be incorporated and become a part of this section of Primary Terms.**</p>
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II. LESSEE PROVISIONS

1. **TERM:** Lessee agrees to lease from Lessor and Lessor agrees to lease to Lessee the Equipment described in the Primary Terms above, which Lessee agrees shall be used consistent with this Lease, Lessee's agreement with Agency for the use thereof, and any rules, laws, regulations, or statutes set forth by Agency or binding upon Lessee in his/her relationship with Agency. The term of this Lease Agreement is either weekly, biweekly, or monthly as set forth in the Primary Terms above (hereafter the "Lease Term"), and is a recurring term as long as the Equipment remains in the possession of Lessee.

III. AGENCY PROVISIONS

2. **USE OF SOFTWARE; NON-DISCULOSURE OF PROPRIETARY INFORMATION:** As a result of Lessee's entering this Lease with Lessor, and in order to facilitate Agency's monitoring of Lessee, Lessor agrees to provide Agency reasonable access to the software designed to function with the Equipment identified above (the "Software"). The Software may consist of tracking, monitoring, or other programs related to the specific functionality of the Equipment. Lessor further agrees that it shall provide Agency necessary training for its representatives who shall be monitoring Lessee so that they may properly use the Software. Lessor shall also provide customer service to Agency as necessary to ensure continuing monitoring and to update Agency on any changes or updates to the Software that shall affect Agency's use thereof. Agency acknowledges that Agency's access to the Software shall generally be limited to password-controlled Internet access and that no software shall actually be delivered to Agency, unless in Lessor's sole discretion such delivery or installation shall be required to provide Agency the access required hereunder. Agency shall bear all responsibility for providing its own computer hardware and software meeting minimum requirements for access to the Software. Agency acknowledges that the Software may consist of proprietary information that is the sole and exclusive property of Nexus, Libre y Nexus, or other entities or persons, and that in order to fulfill the purposes of this Lease, Lessor may entrust Agency with certain proprietary information about the Equipment. Agency expressly agrees a) that the Software shall be used by the Agency only for the purpose of tracking and monitoring of the Lessee herein; b) that only individuals authorized by the Agency to fulfill such purpose shall be given access to the Software; and c) that the Agency shall treat as confidential and not disclose any of the proprietary information related to the Software in any manner without prior written authorization of the respective holders. If Agency is required by applicable law or regulation or by legal process to disclose any proprietary information, Agency agrees that it shall provide Lessor with prompt notice of such request to enable Lessor to seek a protective order or other appropriate remedy prior to disclosure. Should this Agreement be terminated for any reason whatsoever, Agency shall, at the request of Lessor, either

MAN
Lessor's Initials

Agency's Initials

OER
Lessee's Initials



destroy or promptly deliver to Lessor all documents containing Proprietary Information, including all copies, reproduction, summaries, analysis or extracts thereof, in the possession of Agency, and certify to Lessor that Lessee has done so.

3. **AUTHORITY OF SIGNER.** By signing below, the signer of this Lease for Agency certifies that he/she has all proper authority to bind the Agency hereto, pursuant to its Articles, Bylaws, statutory or other charter, ordinances, laws, or any other rules governing such authority.

IV. GENERAL PROVISIONS APPLICABLE TO BOTH LESSEE AND AGENCY

4. **DEFAULT INDEPENDENT OF CRIMINAL PROCESS:** The parties hereto acknowledge that the tracking and monitoring which is contemplated hereunder by the Agency may be undertaken in conjunction with criminal process against Lessee, or that Lessee has voluntarily undertaken to use the Equipment in order to satisfy a criminal conviction or plea agreement, or to avoid incarceration by Agency. Agency and Lessee agree, however, that Lessee's default under this Lease shall be deemed independent of any criminal matter or procedure required under Agency rules or the laws and regulations of the jurisdiction(s) within which it acts; in other words, with the exception of any notification requirements set forth herein, no due process, whether criminal, civil, or otherwise, shall be required before Lessor may assert its rights hereunder related to (a) payment, (b) redelivery or repossession of the Equipment from Lessee or Agency, or (c) enforcement of any other Lease provisions. Lessor agrees that in effecting redelivery or repossession of the Equipment from Lessee, it shall coordinate with Agency and/or with other law enforcement whenever possible, but it shall have no duty to do so where in its own discretion it deems such coordination unnecessary or impractical.

Lessor:
Libro by Nexus Inc.
2 N Main St
Harrisonburg, VA 22802
(888) 997-7666

Agency:
Address: _____

Lessee: OSCAR ERNESTO RIVAS-DAMAZ
Address: _____

Telephone: _____
Fax: _____

Telephone: _____

X
By: Libro by Nexus Inc.
Title: Authorized Agent

X
By: _____
Title: _____

Lessee Signature: *[Signature]*
Co-Signer Signature: *[Signature]*
Co-signer is jointly liable for rental agreement and all terms herein.

AUTHORIZATION TO CHARGE CREDIT CARD / CASHIERS CHECK PAYMENTS

The Cardholder named below hereby authorizes Lessor, without limitation, to charge the credit card listed for all charges, rents, and fees associated with the foregoing Lease. Cardholder and/or Lessor agrees and acknowledges that all charges and fees shall be non-refundable, are prorated the 1st month, and are not prorated thereafter, and waives his/her right to protest the charges made hereunder through his/her Credit Card Company. Recurring charges will be billed on the 28th day of each succeeding month unless Lessee / Agency notifies Libro by Nexus Inc. in writing by the 28th of each preceding month. In the event the Lessee / Agency pays by Cashiers check the payments must also be received by the 28th of the month for each succeeding month.
(PLEASE PRINT ALL INFORMATION CLEARLY AND LEGIBLY BELOW.)

Card Type (check one): Visa / MC / Diner / AmEx

Card Number: _____

Exp. Date (MM/YY): ____/____

Security Code (usually located on back of card): _____

Cardholder Name and Address (where bill is received):
 Check if Cardholder's billing name and address same as Lessee's above.

We are committed to maintaining your privacy as the Cardholder. In the spaces below, please indicate a four- (4) digit number of your choosing. This number shall be printed in the description on your bill for each transaction related to this Agreement. Please write down and keep in a safe place. The number you choose below is for your own future reference.

Name: _____
Address 1: _____
Address 2: _____
City, State, Zip: _____

Your transaction ID number: _____

Cardholder Sign: _____

Lessee's Ackn. (if not the Cardholder): _____

[Signature]
Lessor's Initials

Agency's Initials

[Signature]
Lessee's Initials

**** Lease Agreement Addendum**

Libre by Nexus Inc. requires payment in advance for each month and all billing is on a 31 day basis with a pro-ration for the 1st month, no pro-rations for succeeding months, and a pro-ration credit for final month. Payments will be automatically charged on the 30th day of each calendar month from the date of the initial activation date. Cashier check payments must be made by the 25th of the month for the preceding month.

Nexus Programs Inc. ("Lessor") requires that Agency and/or Lessee call Nexus Programs Inc. ("Lessor") to activate and deactivate all devices.

The terms and conditions set forth in the Lease agreement are in full force and effect for all devices ordered, leased, or in the possession of Lessee that have been provided by the Lessor.

Lessee agrees and understands that this lease agreement will cover any and all Tracking devices ordered (leased) from Lessor regardless of the quantities, date of order (lease), length of lease terms, or funds due Lessor by Lessee.

Further, Lessee by ordering any device from Lessor gives their expressed and or implied permission to Lessor to immediately charge to the Lessee's account all funds due per the terms of this lease for all devices in the possession of the Lessee and Damaged/Lost/Stolen Device and Accessories replacement cost fees as set forth herein.

Damaged/Lost/Stolen Devices and Accessories

Definition: Any Device which has sustained damage to the casing or the strap that inhibits its' ability to function properly or not at all.

Any device accessories that have sustained damage which inhibits their ability to function properly or not at all.

Any time a Client Illegally removes the _____ and discards it.

Any time a Client loses _____ accessories or has them stolen.

The following are the Damaged/Lost/Stolen Device and Accessories replacement part cost fees and Security Deposit Options:

- OER A/C Charger (Replacement cost fee \$50.00)
- OER Bracelet Device (Replacement cost fee \$3,950.00)

Security Deposit Options: For Bracelet Device:

- OER Option A: \$3950.00 deposit per device, the replacement cost of the Bracelet Device
- X Option B: Insurance @ .50 cents per day with a deductible in the event of loss @ \$50.00

Schedule of Fees:

YOU WILL BE CHARGED THESE FEES for services and violations. All violations will be reported to your supervision officer.

Fees for services and Violations of GPS Monitoring conditions by the client or offender:

- Installation / De-Installation: \$50.00
- Any non-compliance requiring action by staff: \$50.00
- OER Any non-compliance requiring a physical response by Staff: \$100.00 plus mileage
- OER If location of the client or defendant is required if attempting to flee jurisdiction or GPS Tracking: \$35.00 Per hour plus mileage
- OER Disabling, damaging, or removing of the strap which requires a physical response by NEXUS SERVICES. Staff: \$100.00 plus mileage
- OER Non-compliance of an Inclusion Zone: \$50.00
- OER Non-Compliance of an Exclusion Zone: \$75.00
- OER Recovery of any equipment requiring a physical response: \$250.00 plus mileage
- OER Court appearance caused as a result of any non-compliance: \$75.00 per hour plus mileage
- OER Report Documentation other than normal daily reports resulting from any non-compliance issue: \$50.00 per report

By signing this lease agreement the lessee agrees to pay the above listed Fees, services, and any violation fees immediately upon notification by Lessor. Any failure to do so constitutes breach of contract and will be reported to you supervision officer.

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Lessee's Initials

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, OCTOBER 11, 2019

SCC-CLERK'S OFFICE
DOCUMENT CONTROL CENTER

2019 OCT 11 P 12:41

152-2-0059

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

NEXUS SERVICES INC.,
LIBRE BY NEXUS INC.,
MICHAEL PAUL DONOVAN, and
RICHARD EDWARD MOORE,
Defendants

CASE NO. INS-2018-00069

AMENDED RULE TO SHOW CAUSE

The Bureau of Insurance (the "Bureau") of the State Corporation Commission (the "Commission"), after having conducted an investigation of this matter, alleges as follows:

I. Summary of Allegations

1. Since approximately 2014 (the "Relevant Period"), Nexus Services Inc., Libre by Nexus Inc., Michael Paul Donovan, and Richard Edward Moore (collectively, the "Defendants"), while unlicensed by the Bureau to transact the business of insurance, have solicited, negotiated, and ultimately sold through Libre by Nexus Inc. surety insurance in the form of immigration bonds.

2. At least 400 immigration surety bonds have been sold by the unlicensed Defendants in the Commonwealth of Virginia (the "Commonwealth"), totaling nearly \$1 million in bond premiums. The unlicensed Defendants have profited from their immigration bond business by retaining a portion of the bond premiums, along with other fees in connection with the sale of the bonds.



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3. By acting and continuing to act as insurance agents in soliciting, negotiating, and selling immigration surety bonds and profiting from such insurance activities throughout the Relevant Period, the unlicensed Defendants have violated § 38.2-1822 of the Code of Virginia (the "Code").

4. Though the Bureau alerted the unlicensed Defendants approximately 17 months ago about, and has since attempted to work with them to address, their violative conduct, the Defendants have taken no steps to come into compliance with the Code's licensing requirements, have not filed any applications to become licensed, and have refused to cease their non-compliant and unlicensed insurance activities. The Bureau, accordingly, asserts that, in addition to penalties, a cease and desist order should be entered pursuant to § 38.2-219 of the Code.

II. The Defendants

5. Nexus Services Inc. ("Nexus") was originally formed in 2013 as a domestic stock corporation in Virginia. Until March 2019, Nexus' principal office was located at 113 Mill Place Parkway, Suite 103, Verona, Virginia 24482. In March 2019, Nexus surrendered its existing charter and reincorporated as a foreign stock corporation with a principal office in Georgia. However, Nexus maintains a Virginia registered agent whose address is 7288 Hanover Green Drive, Mechanicsville, Virginia 23111.

6. Libre by Nexus Inc. ("Libre") was originally formed in 2014 as a domestic stock corporation in Virginia. Libre is a wholly-owned subsidiary of Nexus and has the same principal office which, until March 2019, was located in Virginia. In March 2019, like Nexus, Libre surrendered its existing charter and reincorporated as a foreign stock corporation with a principal office in Georgia. However, Libre maintains the same Virginia registered agent as Nexus.

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7. Michael Paul Donovan ("Donovan") is an individual and resident of Virginia. Donovan has been the President of Nexus since the date of its original incorporation.

8. Richard Edward Moore ("Moore") is an individual and resident of Virginia. Moore has been the Vice President of Nexus since the date of its incorporation.

9. Libre purports to assist immigrant detainees subject to U.S. Immigration and Customs Enforcement ("ICE") detention by providing them with immigration bond services to facilitate their release. Libre also apparently offers non-insurance related services once the detainees have been released, such as language translation, travel assistance, counseling, and access to legal services.

III. The Defendants' Solicitation, Negotiation, and Sale of Immigration Surety Bonds

Background Regarding Immigration Surety Bonds

10. Undocumented immigrants apprehended by ICE are detained until their cases can be heard by the immigration courts. If an immigrant detainee wishes to secure their release from detention by ICE while his or her case is pending, he or she (or someone on their behalf) must post bond, for some amount set by an immigration judge.

11. To post bond and secure their release, immigrant detainees themselves can pay the full bond amount directly to ICE. However, because many immigrant detainees are unable to afford the full bond amount themselves, the detainees alternatively can obtain an immigration surety bond sold by a licensed bonding agency as the agent of a licensed surety insurance company.

12. An immigration surety bond is a form of "surety insurance" pursuant to § 38.2-121 of the Code. The bond is generally a three-party contract executed between ICE and a licensed bonding agency as the agent of a licensed surety insurance company. The

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surety insurance company writes and guarantees the bond to secure the detainee's appearance at future hearings and proceedings and compliance with other terms and conditions of his or her release, in exchange for premium payments from the detainee.

13. As part of the sale and in addition to paying their stated bond premium, immigrant detainees typically must furnish to the bonding agencies collateral – either cash or other assets – to secure at least the full amount of the bond.

14. Bonding agencies and their respective agents seeking to solicit, negotiate, and sell surety bonds in the Commonwealth must be licensed as insurance agents by the Bureau, in order to comply with § 38.2-1822 of the Code.

15. Licensing of surety insurance agents ensures that their conduct in performing these transactions is subject to the Bureau's regulatory authority and right to examine them pursuant to its authority.

16. Importantly, the Bureau supervises, among other things, whether the agents are dealing with their customers fairly and honestly, whether customers are fully apprised of all the terms and conditions that apply with respect to the insurance sold to them, and whether customers' funds are properly handled. Licensure and oversight by the Bureau are especially important when the agents are dealing with vulnerable customers – such as immigrant detainees – who are navigating difficult situations, likely do not understand the underlying immigration or insurance systems, may not be able to fully comprehend contracts or other legal documents presented, and may speak a different language (or dialect) than the agents.

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Libre's Solicitation and Approval Process for the Sale of Immigration Surety Bonds

17. As part of their business model, the Defendants promote Libre's ability to provide customers (either the immigrant detainees themselves or family members and other acquaintances co-signing the bonds on the detainees' behalf) (collectively, "Customers") with immigration surety bonds to secure a detainee's release from ICE detention. The Defendants market Libre as an alternative to "other companies that might be bond providers."

18. The Defendants represent that, if Customers apply, contract, and pay for the bonds with Libre, the Customers can avoid furnishing the full collateral typically required by traditional bond providers, namely, licensed bonding agencies.

19. Instead of requiring full collateral, Libre allows the detainees to lease for an additional fee and wear a Global Positioning System ("GPS") device (*i.e.*, a monitoring anklet) that serves as alternative collateral for the bonds.

20. Throughout this process, the Defendants, along with their employees, solicit, negotiate, and sell immigration surety bonds in and from Virginia. However, none of the Defendants, nor their employees who interact with Customers in connection with these bonds, are licensed by the Bureau to transact the business of insurance in Virginia.

21. From the moment Customers contact Libre about obtaining immigration surety bonds through Libre's finalization of the sale of the bonds to the Customers, the Customers' sole interaction is with the unlicensed Defendants and their employees. At no point in this entire process do the Customers themselves interact at all with licensed surety insurance companies, bonding agencies, or their agents.

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22. Libre invites its Customers to "call us and we can help you" and represents that "one of our associates ... will collect the necessary information and process the bond." Libre Customers, thus, initially contact Libre, and not a licensed bonding agency, to obtain an immigration surety bond.

23. Additionally, Libre requires its Customers to undergo an application process that is overseen and directed by Libre. The application documents used in this process are created and developed by Libre itself. Libre alone reviews these application documents and decides whether to approve the sale of immigration surety bonds to immigrant detainees.

24. One of these Libre-created documents is a "Risk Assessment" form used to assess whether Libre will approve the sale of an immigration surety bond to an immigrant detainee for "Automatic Approval," "Conditional Approval," "Exec Dir Approval," or approval with "GPS Required."

25. Libre also asks its Customers to sign a "Libre by Nexus Respondent Contract," acknowledging that, if immigrant detainees do not meet the "terms and conditions" of their immigration surety bonds, the detainees' bonds "may be revoked." The contract is strictly between Libre and its Customers. Though the contract has a space for the name of the "Bondsman," this space remains blank when Libre Customers sign the contract for the bonds.

Libre's Post-Approval Process for Finalizing the Sale of Immigration Surety Bonds

26. After Libre Customers complete the application process and Libre itself approves the sale of immigration surety bonds, Libre forwards certain of the immigrant detainees' personal information to licensed bonding agencies responsible for executing the

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bonds with ICE. Only then does Libre disclose to the Customers the name of the bonding agency it has directed to execute the bonds.

27. After approving the sale of immigration surety bonds, Libre then requires its Customers to sign a number of other documents it has created, including a "Client Information Sheet" and a "Contract for Immigration Bond Securitization and Indemnity Agreement." In these documents, Libre discusses the terms and conditions of the bonds it approves, including the applicable bond premium and fees.

28. Once the sale is finalized, Libre Customers pay Libre itself – and not a licensed bonding agency – all applicable premium and fees associated with their immigration surety bonds, as discussed with them by Libre.

29. When Libre Customers make such payments to Libre, the company provides them with copies of sales receipts confirming that a portion of their payments constitutes a "Bond Payment (To Be Forwarded To Bond Company)."

30. Before remitting the premium portion of its Customers' payments to the bonding agencies, Libre deducts and retains some of that premium. Indeed, Libre specifically informs Customers that it will "deduct[]" an amount from the "premium" prior to remitting that premium to a licensed bonding company.

31. Libre subsequently remits the remainder of the bond premium to licensed bonding agencies that ultimately execute the immigration surety bonds with ICE. The bonding agencies are themselves responsible for forwarding some amount of that premium to the surety insurance companies that write the bonds.

32. Donovan and Moore, as Libre's principals, are fully aware and involved in Libre's process of approving and finalizing the sale of immigration surety bonds. In

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multiple instances, Donovan's name has appeared on the as-executed bonds as the one who personally directed the execution of the bonds with ICE. Moore personally handles the remittance of premium collected by Libre to the bonding agencies.

Bonding Agencies and Surety Insurance Companies Engaged by Libre

33. As stated above, only after Libre has already solicited, negotiated, and sold immigration surety bonds to immigrant detainees are the bonds ultimately executed with ICE by licensed bonding agencies. During most of the Relevant Period, the bonding agencies used by Libre to execute the bonds have been Statewide Bonding, Inc. ("Statewide") and Big Marco Insurance & Bonding Services, LLC ("Big Marco").

34. The bonds executed by Big Marco were written with RLI Insurance Company ("RLI"), a licensed surety insurance company, for which Big Marco served as the duly licensed and appointed agent (hereinafter, the "Big Marco-RLI Bonds"), until March 2017. The bonds executed by Statewide were, and continue to be, written with Financial Casualty & Surety, Inc. ("FCS"), another licensed surety insurance company, for which Statewide serves as the duly licensed and appointed agent (hereinafter, the "Statewide-FCS Bonds").

35. Big Marco and Statewide have been licensed as bonding agencies and duly appointed to solicit, negotiate, and sell the Big Marco-RLI Bonds and Statewide-FCS Bonds, respectively, to immigrant detainees.

36. But neither Big Marco nor Statewide has had any role in Libre's interactions with Customers. At no point, in the course of obtaining such bonds from Libre, have Libre Customers had any direct contact with Big Marco, Statewide, or their agents. These

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insurance activities have been handled exclusively by Libre and its employees which are not employed by and do not otherwise work for Big Marco and Statewide.

37. Throughout the Relevant Period, Libre – not Statewide – has solicited, negotiated, and sold to its Customers in Virginia at least 257 Statewide-FCS Bonds, which represents, in total, bond amounts of approximately \$2.6 million and bond premiums of approximately \$521,000.

38. Libre – not Big Marco – has also solicited, negotiated, and sold to its Customers in Virginia at least 156 Big Marco-RLI Bonds, which represents, in total, bond amounts of approximately \$1.9 million and bond premiums of approximately \$381,000.

39. Libre continues to use Big Marco, Statewide, and others to execute the bonds that the Defendants themselves market, solicit, negotiate, and sell to Customers.

40. Libre has generated millions of dollars in annual revenue from its immigration surety bond business. Libre's revenue, in turn, comprises all or most of its parent company Nexus' revenue.

The Defendants' Ongoing Solicitation, Negotiation, and Sale of Immigration Surety Bonds

41. Libre's immigration surety bond business continues to this day. Libre and its employees, in fact, still solicit, negotiate, and sell Statewide-FCS Bonds.

42. Though RLI stopped writing bonds for Libre in and around March 2017, Libre did not alter its business model and instead has continued to solicit, negotiate, and sell immigration surety bonds written by other licensed surety insurance companies.

43. Between June 2018 and March 2019, Libre contracted to offer its Customers immigration surety bonds written by Evergreen National Indemnity Company

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("Evergreen"), for which Libre and its employees continued to handle the solicitation, negotiation, and sale.¹

44. Then, when Evergreen stopped writing bonds for Libre in March 2019, Libre contracted directly with American Surety Company ("ASC") to offer its Customers immigration surety bonds, instead of altering its business model to properly comply with Virginia laws.

45. Notably, when offering the ASC bonds, Libre does not involve any licensed bonding agencies like Statewide or Big Marco. Instead, Libre, though unlicensed, executes such bonds sold to its Customers directly through ASC, the surety insurance company.

IV. The Bureau's Investigation

46. On or about April 16, 2018 (the "2018 Letter"), the Bureau notified the Defendants that their insurance activities with respect to immigration surety bonds violated Virginia law. The Bureau, thereafter, has continued to communicate with the Defendants, through their respective counsel, regarding the Bureau's position.

47. In the course of these communications, the Bureau has repeatedly identified and detailed its concerns regarding Libre's unlicensed solicitation, negotiation, and sale of immigration surety bonds and its receipt of premium and other valuable consideration in connection with such unlicensed insurance activities. The Bureau has continued to attempt to work with the Defendants towards compliance with respect to these unlicensed activities.

¹ As it had with the Big Marco-RLI Bonds, with respect to the Evergreen bonds, Big Marco handled the execution of the bonds with ICE.

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48. Despite being aware of the Bureau's allegations and efforts to resolve the licensing issues, the Defendants have not modified their non-compliant business model in any way and have expressed no intention of ceasing their unlicensed insurance activities.

49. Rather than ceasing and desisting and otherwise modifying or winding down their non-compliant business practices upon receiving the Bureau's 2018 Letter, as discussed in paragraphs 41 through 45 above, the Defendants have actually increased the level of their insurance activities by engaging and entering into new agreements with additional surety insurance companies to conduct insurance business in the Commonwealth. The Defendants, for example, have contracted with ASC to solicit, negotiate, and sell immigration surety bonds written by ASC as recently as March 2019, a year after they received the Bureau's 2018 Letter.

V. Violations

A. The Defendants' Violations of § 38.2-1822 of the Code

50. The Defendants have each violated § 38.2-1822 of the Code by acting as unlicensed insurance agents with respect to immigration surety bonds that Customers obtain from Libre.

51. Section 38.2-1822 of the Code provides, in relevant part, that no "person" – including any "individual" or "business entity" – "shall act . . . in this Commonwealth as an agent of an insurer licensed to transact the business of insurance in this Commonwealth without first obtaining a license in a manner and in a form prescribed by the Commission."

52. Under the Code, a person acts as an agent by "selling, soliciting, or negotiating contracts of insurance" and/or "receiving or sharing, directly or indirectly, any commission or

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other valuable consideration arising from the sale, solicitation, or negotiation of any such contract."

53. To engage in these insurance activities, a person must obtain a properly-issued insurance agent license.² Otherwise, such person is in violation of § 38.2-1822 of the Code.

54. As outlined above, and incorporated herein, Libre and its employees engage in the unlicensed solicitation, negotiation, and sale of immigration surety bonds to Libre Customers. In obtaining the bonds, Customers deal exclusively with Libre and have no contact with any licensed surety insurance companies or licensed bonding agencies in connection with the sale.

55. Once the sale is finalized, Libre Customers make payments of all applicable premium and fees associated with their bonds directly to Libre. Libre retains such fees and a portion of the premium that the company has collected directly from its own Customers.

56. Libre's principals Donovan and Moore, both of whom are also unlicensed, are personally involved in such unlicensed insurance activities, as evidenced by the fact that Donovan's name appears on the as-executed bonds and Moore oversees the remittance of residual premium to licensed bonding agencies.

57. Furthermore, while unlicensed, Libre's parent company Nexus, along with Donovan and Moore, directly or indirectly receive consideration arising from Libre's unlicensed insurance activities with respect to immigration surety bonds. Nexus' primary, if not sole, source of revenue is Libre.

² Indeed, the Code specifically states that a surety "bondsman" who "sells, solicits, or negotiates" a surety bond must be "licensed by the State Corporation Commission as a property and casualty insurance agent." Va. Code § 9.1-185.

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58. Accordingly, the Bureau asks the Commission to (a) find that the Defendants have violated § 38.2-1822 of the Code on at least 413 occasions with respect to their unlicensed solicitation, negotiation, and sale of Statewide-FCS Bonds and Big Marco-RLI Bonds and (b) impose applicable civil penalties as authorized by § 38.2-218.

B. The Defendants' Ongoing Insurance Activities Warrant the Entry of a Cease & Desist Order

59. As detailed in paragraphs 41 through 45 and paragraphs 48 through 49, the Defendants' aforesaid alleged violations of § 38.2-1822 of the Code are ongoing.

60. Section 38.2-219 of the Code provides that, where the Commission has "reason to believe that any person has committed a violation of [Title 38.2 of the Code]," it has the authority to issue an order "requir[ing] that person to show cause why an order should not be made by the Commission directing the alleged offender to cease and desist from the violation." After the alleged offender has an "opportunity to be heard in accordance with the Commission's order," the Commission may direct such person to cease and desist from the violation.

61. Libre continues to solicit, negotiate, and sell to its Customers immigration surety bonds written by FCS and ASC. Even when certain licensed surety insurance companies like RLI and Evergreen have ceased doing business with Libre, the Defendants have found other insurance companies willing to write the bonds that continue to be solicited, negotiated, and sold by Libre to its Customers.

62. Despite notifying the Defendants on numerous occasions about their violative conduct, the Defendants have ignored the Bureau's request to cease their unlicensed insurance activities.

63. Instead, the Defendants have actively continued to solicit, negotiate, and sell immigration surety bonds and have since entered into additional arrangements with other surety

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insurance companies to conduct these unlicensed insurance activities in further violation of § 38.2-1822 of the Code.

64. Accordingly, the Bureau has no reason to believe that the Defendants will ever cease engaging in these unlicensed insurance activities, unless directed by the Commission to do so.

65. As such, the Bureau asks the Commission, pursuant to § 38.2-219 of the Code, to order the Defendants and any other individuals or entities acting on the Defendants' behalf to cease and desist from (a) soliciting, negotiating, or selling immigration surety bonds to or from Virginia or (b) otherwise receiving premium, revenue, or other valuable consideration from such solicitation, negotiation, or sale of these bonds to or from Virginia, in violation of § 38.2-1822 of the Code.

Accordingly, IT IS ORDERED THAT:

(1) This matter has been docketed and assigned Case No. INS-2018-00069.

(2) In accordance with Rule 5 VAC 5-20-120 of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.*, this matter is assigned to a Hearing Examiner who shall conduct all further proceedings in this case on behalf of the Commission and file a Final Report.

(3) The Commission's Hearing Examiner shall convene a hearing in this case in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, on March 10, 2020, commencing at 10 a.m. and continuing thereafter as necessary. The Defendants may appear at this hearing and show cause why they should not be ordered to cease and desist from violating § 38.2-1822 of the Code and be subject to civil penalties and costs of investigation for such alleged violations.

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(4) On or before November 1, 2019, the Defendants shall file with the Clerk of the Commission a responsive pleading in which the Defendants expressly admit or deny the allegations in this Rule to Show Cause and present any affirmative defenses to the allegations that the Defendants intend to assert. If the Defendants present any affirmative defense, they shall set forth in the responsive pleading a full and clear statement of all the facts upon which the Defendants are prepared to prove such affirmative defense. The Defendants shall expressly indicate in the responsive pleading whether or not they desire and intend to appear and be heard before the Commission on the scheduled hearing date. If not filed electronically, an original and fifteen (15) copies of the responsive pleading shall be delivered to Joel H. Peck, the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. The responsive pleading shall contain the caption setting forth the style of this case and its number.

(5) The Defendants may be found in default if they fail to either timely file a responsive pleading as set forth above or other appropriate pleading, or if each files such pleading and fails to make an appearance at the scheduled hearing. If found in default, the Defendants shall be deemed to have waived all objections to the admissibility of evidence and may have entered against each a judgment by default imposing some or all of the aforementioned sanctions permissible by law.

(6) The Defendants may offer to negotiate a settlement of this matter by telephoning the Office of General Counsel at (804) 371-9671. Any negotiated settlement is subject to approval by the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission,
CERTIFIED MAIL, RETURN RECEIPT REQUESTED to: Counsel of Record for the
Defendants, Eric M. Page, Esquire, and Anthony Troy, Esquire, Eckert Seamans Cherin &

Mellott, LLC, 919 East Main Street, Suite 1300, Richmond, Virginia 23219; and a copy shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance.

19102059

Kelly Salzmann

From: Kelly Salzmann
Sent: Tuesday, August 18, 2020 9:38 AM
To: nmigliaccio@classlawdc.com; jrathod@classlawdc.com; apersinger@tzlegal.com; mchristensen@tzlegal.com; jnewmark@centrolegal.org; Aidin Castillo
Cc: Simon Sandoval-Moshenberg
Subject: Question re: Quintanilla Settlement

Good morning,

We have been contacted by several individuals with questions about the Libre by Nexus settlement. In particular, we want to advise clients and potential clients about the impact of the settlement on defenses to potential future collection actions by Libre, but the settlement agreement and draft notice appear to be silent on whether affirmative defenses to possible future actions to enforce a contract (such as fraud in the inducement, illegality, or violation of public policy) are waived for class members.

Do the parties have an understanding as to whether this settlement agreement is meant to waive classmembers' affirmative defenses should Libre by Nexus file a collection action against them?

Thanks for any insight that you can give.

Kelly

Kelly Salzmann (she/her/ella), Attorney
Legal Aid Justice Center
6066 Leesburg Pike #520
Falls Church, VA 22041
571-620-5260 / kelly@justice4all.org
<http://www.justice4all.org>

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Date Accepted (MM/DD/YY) 12-7-10-24-20	Scheduled Delivery Time <input type="checkbox"/> 10:30 AM <input checked="" type="checkbox"/> 3:00 PM <input type="checkbox"/> 12 NOON	Insurance Fee \$	COD Fee \$
Time Accepted 12:11	10:30 AM Delivery Fee \$	Return Receipt Fee \$	Live Animal Transportation Fee \$
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