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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

FRANK CHINDAMO, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

CHAPMAN UNIVERSITY, a California
Non-Profit Corporation,

Defendant.

Case No. 30-2020-01147814-CU-OE-CXC

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR ORDER
GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: September 2, 2021

Time: 2:00 p.m.

Judge: Hon. Peter Wilson

Dept.: CX102

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I. INTRODUCTION

Plaintiff Frank Chindamo seeks preliminary approval of a non-reversionary \$1,150,000 settlement of his wage and hour class claims against Chapman University (“Defendant” or “Chapman”) on behalf of three overlapping classes: (1) 1,374 “Adjunct Class Members” who worked for Defendant as adjunct (part-time) instructors in California between July 10, 2016 and December 31, 2019 (“Adjunct Class Period”); (2) 4,738 “Working From Home Reimbursement Class Members” or “WFH Class Members” who worked for Defendant between March 19, 2020 and June 30, 2021 (“WFH Class Period”) and who were eligible to work remotely for Defendant; and (3) 1,832 “Parking Reimbursement Class Members” or “PR Class Members” who worked for Defendant in California at any time between November 19, 2019 and March 26, 2020 (“Parking Reimbursement Class Period”) and who purchased an employee parking permit from Defendant during that period. (Adjunct CMs, WFH Class Members, and PR Class Members are collectively referred to as “Class Members” or “CMs”). The total number of unique CMs is 5,507.

The settlement will result in average payments to Adjunct CMs of \$629.55 gross and \$362.54 net; average payments to the WFH Class Members of \$52.76 gross and \$30.84 net; and average payments to PR Class Members of \$19.12 gross and \$10.88 net. Further, 94% of PR class members¹ are also in the WFH (or Adjunct) class, meaning that the vast majority of the PR Class are entitled to payments of *at least* \$71.88 gross and \$41.72 net.² The 425 members of all three classes are entitled to a payment of \$701.43 gross and \$404.26 net. These are good results when considering that each CM entered into an arbitration agreement with Defendant that included an express class action waiver. Moreover, Defendant has overhauled (or is in the process of overhauling) and discontinued the policies challenged in Plaintiff’s lawsuit to ensure compliance with the Labor Code.

The Settlement avoids all these risks associated with the typical litigation, as well as the very significant risk presented by Chapman’s arbitration agreement. As shown below, the terms of the Settlement Agreement are fair and reasonable and satisfy the criteria for judicial approval. Accordingly, the Court should grant preliminary approval, approve the proposed Notice, and set a date for final approval.

///

¹ 1,727 of the 1,832 PR Class Members belong to one or both of the other classes.

² 56% of the Adjunct Class (763 of the 1,374 Adjuncts) and 41% of WFH Class (1,963 of 4,738 WFH Class Members) belong one or both of the other classes.

II. OVERVIEW OF THE SETTLEMENT

The Settlement Agreement resolves all claims of the Plaintiff and the proposed Classes. A summary of the Settlement terms is as follows:

1. Gross Settlement Amount (“GSA”) – Chapman will pay a non-reversionary sum of \$1,150,000 to settle all claims alleged in the operative Complaint. SA § 1.1. In addition, Chapman will pay the employer-side payroll tax payments due and payable on the wage portion of the settlement awards as a result of this Settlement. Id.

2. Class Definitions and Class Periods – The “Adjunct Class” consists of adjunct (part-time) instructors who worked for Defendant in California at any time during the period between July 10, 2016 and December 31, 2019. The “WFH Class” consists of all individuals who worked for Defendant in California at any time during the period between March 19, 2020 and June 30, 2021 and who were eligible to work remotely for Defendant. The “PR Class” consists of all individuals who worked for Defendant in California at any time during the period between November 19, 2019 and March 26, 2020 and who purchased an employee parking permit from Defendant during that period. SA § 1.2

3. Attorneys’ Fees, Costs, and Service Award – Class Counsel will seek attorneys’ fees of up to \$383,333.33 (1/3 of the GSA), up to \$25,000 to reimburse out-of-pocket litigation costs, and Service Award of up to \$5,000 for the Named Plaintiff. SA §§ 1.21, 6.

4. PAGA Award – The Settlement allocates \$50,000 for the PAGA claim, to be divided 75/25 between the LWDA and the Settlement Class members who worked during the relevant PAGA Period. SA § 8.

5. Settlement Administrator and Administration Costs – The Parties have mutually agreed to use Simpluris, Inc. as the Administrator. SA § 9. Settlement Administration Costs are capped at \$35,000. Id.

6. Settlement Payments – The Settlement will be allocated as follows: Approximately 75% of the NSA (\$498,125) will be allocated to the Adjunct Class and paid out *pro rata* based on the number of weeks worked during the Adjunct Class Period; approximately 22% of the NSA (\$146,116) will be allocated to the WFH Class shall be paid *pro rata* based on the number of weeks worked during the WFH Class Period; and approximately 3% of the NSA (\$19,925) will be allocated to the PR Class and shall paid *per capita* to each PR Class Member as follows: PR Class Members who purchased Adjunct Faculty Permits, Carpool Permits, or Presbyterian Lot/West Campus Structure Permits shall have their payment reduced by 75% (i.e., multiplied by 0.25) to account for the fact these parking permits cost, on average,

75% less than full-time parking permits. SA §§ 5.1.1-5.1.3. All payments will be made automatically to class members who do not opt out without the need to submit any claim form. SA § 5.3.

7. Class Notice – Within 10 business days after the Court grants preliminary approval, Chapman will provide Simpluris with a class list and the relevant data. SA § 10.1.1. Within 20 business days of receiving the Class List, Simpluris will mail Notice substantially in the form attached to the Settlement Agreement as **Exhibit A**, and will use skip trace procedures for returned mail. S.A. §§ 10.1.3.

8. Opting Out or Objecting – CMs who wish to opt-out of the Settlement must send a written notice to Simpluris within 60 days of the mailing of the Notices. SA § 11. Any CM who properly requests to opt-out will not be entitled to receive any payment under the settlement and will not be bound by the settlement, except that he/she will receive his/her portion of the PAGA settlement, if entitled to any, and will be bound by the settlement of the PAGA claim. SA § 11. 2. A CM may object to the Settlement by mailing an objection to Simpluris within 60 days of the mailing of the Notices. SA § 12.

9. Disputes – If any Adjunct or WFH Class Member disagrees with the work weeks information on their Notice, they may dispute such information. SA § 13. Simpluris will resolve challenges based on Defendant’s records and any documents or information presented by the CMs. *Id.*

10. Tax Consequences of Settlement Payments – For tax purposes, Adjunct CM payments will be allocated 1/3 to wages and 2/3 to penalties and interest. Payments to WFH / PR Class Members will be allocated 100% to non-wage payments. SA §§ 5.2.1 – 5.2.2.

11. Uncashed Checks – Subject to Court approval, the parties have designated the WISEPlace as *cy pres* recipient under Code of Civil Procedure § 384. SA § 14.2.

12. Scope of Release and Final Judgment –CMs will release all claims alleged in the operative Complaint and arising during the relevant Class Periods. SA §§ 16.1-16.3. Named Plaintiff will also give a general release as consideration for his Service Award. *Id.* § 16.4.

III. OVERVIEW OF THE LITIGATION

A. Pleadings

Plaintiff submitted his PAGA Notice on April 13, 2020 alleging that Adjunct CMs were non-exempt employees because they did not earn “a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment” required to be professionally exempt under California law. See Labor Code § 515(a); Wage Order No. 4, § 1(A)(3)(a)-(d). Plaintiff also alleged that Adjuncts were piece-rate workers because Chapman compensated them a set amount per Course, which is a form of piece-rate compensation. Therefore, Chapman was required – but failed – to pay Adjuncts for the non-teaching activities performed outside of their scheduled classroom hours separately from the piece under

1 Labor Code § 226.2 and under Labor Code § 1194; to pay Adjuncts for their rest breaks separately from
2 the piece under Labor Code § 226.2; to authorize and permit paid rest breaks, and pay premiums for
3 missed breaks under Labor Code § 226.7; and to provide off-duty meal breaks under Labor Code § 512
4 and pay premiums for missed meal breaks under Labor Code § 226.7. Defendant's wage statements
5 issued to adjuncts also needed to include hours worked under Labor Code § 226. Plaintiff also alleged
6 that Defendant also failed to pay all wages due and owing upon termination as required under Labor
7 Code § 201, and issued inaccurate wage statements in violation of Labor Code §§ 226(a) and 226.2 (a).
8 Declaration of Julian Hammond In Support of Plaintiff's Motion For Order Granting Preliminary
9 Approval Of Class Action Settlement ("Hammond Decl.") filed herewith, ¶ 12.

10 On July 10, 2020, after waiting the prescribed period to allow the LWDA to investigate the alleged
11 violations, Plaintiff filed a PAGA-only action on behalf of Adjunct CMs. Hammond Decl. ¶ 13.

12 Defendant filed its Answer on August 20, 2020 and affirmed that (a) Adjuncts were exempt
13 employees; (b) that its actions or omissions were in good faith; and (c) that Plaintiff's claims are barred
14 by the First Amendment's ministerial exception. Hammond Decl. ¶ 14.

15 On July 27, 2021, after reaching Settlement, Plaintiff filed a First Amended Complaint adding
16 class causes of actions for the violations alleged in the Complaint; and adding a class and PAGA
17 representative cause of action for Defendant's alleged violations of Labor Code §§ 2802 and 450 on
18 behalf of PR Class Members and WFH Class Members. Hammond Decl. ¶ 16.

19 **B. Pre-mediation Investigation and Discovery**

20 Following the filing of Plaintiff's Complaint, the parties agreed to attend mediation and engage
21 in informal document and data exchange in preparation for the mediation. Hammond Decl. ¶ 17.
22 Chapman produced extensive informal discovery, including (a) Plaintiff's personnel file; (b) exemplar
23 wage statements and contracts; (c) employee handbooks; (c) academic calendars; and (e) other policy
24 documents. Defendant also produced (f) detailed course data for the Class Period including the title of
25 each course and number of credits in each course; (g) detailed scheduling information for the PAGA
26 Period (defined as April 13, 2019 to December 31, 2019); including the start times and end time for each
27 class and the start date and end date for each course; (h) detailed pay data for the PAGA Period including
28 the date and amount of each paycheck. Hammond Decl. ¶ 18.

Plaintiff performed a detailed analysis of the documents and data produced by Defendant and
conducted his own investigation and gathered additional documents from Chapman's website, including
its Remote Work Policies and its University Parking Policy. Plaintiff also conducted an online survey of
Adjunct CMs regarding their unpaid wage claims, and researched Chapman's organizational structure,

1 policies, practices, financial statements, and other publicly available information about Chapman. Id. ¶
2 20.

3 From the informal discovery and investigation, Plaintiff ascertained that during the Adjunct Class
4 Period, Defendant employed Adjuncts pursuant to Contracts that all set out the course(s) which the
5 Adjunct agreed to teach, the semester, the “period of appointment” which started on the first day of the
6 assigned course and ended on the last day of exams. Hammond Decl. ¶ 25. The Contract provided that it
7 expired on the last day of exams and that Adjuncts “had no right, expectation or promise to teach at
8 Chapman beyond the period specified in this agreement.” The Contract also set out the lump sum payable
9 to each Adjunct (“Course Rate”) that was paid out in equal monthly installments over the course of a
10 term. Id. ¶ 26. The Contract provided that the Course rate was contingent upon a minimum enrollment
11 of students in each class taught and if enrollment falls below that number then the “salary will be prorated
12 accordingly...” Id. Despite the use of the term “salary” Plaintiff believed he would be able to establish
13 that the form of compensation was not in fact a salary because a “salary” is a “*predetermined amount*
14 that is *not subject to reduction* based upon the quantity or quality of work.” *Negri v. Koning & Associates*,
216 Cal. App. 4th 392, 399 (2013); rather it more closely resembled a piece rate because it was reduced
based on enrollment. Hammond Decl. ¶ 27.

15 The Contracts incorporated the Lecturer Handbook which listed duties Adjuncts were required to
16 perform in addition to teaching that could not be completed during class hours such as preparing a course
17 syllabus for distribution on the first day of class; attending orientation; holding office hours; grading
18 papers, exams and assignments; and communicating with students via e-mail. Plaintiff alleged that some
19 of these duties were not covered by the Contract because they were necessarily completed before the
20 beginning of the contractual period specified in the Contract (which corresponded to the first day of
classes). Hammond Decl. ¶ 28.

21 From the wage statements provided by Chapman, Plaintiff confirmed that wage statements issued
22 during the Adjunct Class Period did not list any hours, hourly rates, or piece rate information. Hammond
Decl. ¶ 29.

23 Plaintiff also ascertained that beginning March 19, 2020, WFH Class Members were required to
24 work remotely. Chapman implemented and maintained policies and practices requiring and expecting
25 WFH Class Members to have an internet connection and maintain a mobile phone to stay connected with
26 the University. However, during the WFH Class Period, Chapman did not reimburse WFH Class
27 Members for any such expenses, in alleged violation of Labor Code § 2802. Hammond Decl. ¶ 31.

1 Finally, Plaintiff ascertained that during the PR Class Period, Chapman required PR Class
2 Members to park in university owned or operated parking areas and obtain and pay for parking permits,
3 in alleged violation of Labor Code §§ 450(a) and 2802. Hammond Decl. ¶ 32.

4 **C. Chapman Overhauled Its Practices and Policies**

5 Prior to the filing of this Action, in January 2020, Chapman overhauled its compensation policies
6 applicable to Adjuncts, reclassified them as hourly employees, and issued Contracts that specified that
7 preparation, grading, and office hours, were compensable time, and included a rest and meal break policy.
8 In addition, in March 2020, Chapman stopped requiring PR Class Members to purchase parking permits
9 for on-campus parking. Finally, following the filing of this lawsuit, Chapman started drafting an expense
10 reimbursement policy applicable to WFH Class Members that will be retroactive to July 1, 2021, and that
11 will operate in tandem with Chapman’s current cell-phone reimbursement policy for their remote work
12 expenses. Hammond Decl. ¶ 33.

13 **D. Mediation**

14 On November 30, 2020, the parties attended a full-day mediation with Tripper Ortman, a highly
15 respected mediator. Hammond Decl. ¶ 34. Prior to the mediation, the parties submitted detailed briefs,
16 supported by the documents obtained in informal discovery. *Id.* The parties spent the next several months
17 reaching agreement on the basic terms of the settlement. On July 28, 2021, the parties executed the formal
18 settlement agreement that is now submitted to the Court for approval. *Id.*

19 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS APPROPRIATE**

20 When a negotiated class action settlement has been reached prior to certification – as here – the
21 court may make an order approving or denying certification of a provisional settlement class. Cal. Rules
22 of Court, Rule 3.769(d). The decision to certify a class is purely a procedural one and should be based
23 on the allegations in the Complaint and not on the perceived factual or legal merit of the class claims.
24 *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-41 (2000).

25 In California, a Class is certifiable if (1) the class is ascertainable and sufficiently numerous; (2)
26 there exists a well-defined community of interest; and (3) class action is a superior method of
27 adjudication. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1021 (2012); *Linder*, 23
28 Cal. 4th at 435. All class certification requirements are met in this case for the reasons set forth below.

A. The Classes Are Ascertainable and Sufficiently Numerous

Class Members are “ascertainable” where they may be readily identified without unreasonable
expense or time by reference to official records. *See Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955, 980
(2019); *Reyes v. Board of Supervisors*, 196 Cal. App. 3d 1263, 1271 (1987). These criteria are met here

as Defendant's records are sufficient to permit identification of the Class Members.

The Classes are all sufficiently numerous since they each contain more than 1,000 members. *See Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981) [42 people "is quantitatively sufficient for class action"]; *see also* 1 Newberg on Class Actions § 3.12 (5th ed. 2011) ("[A] class of 40 or more members raises a presumption of impracticability of joinder.").

B. "Community of Interest" Exists Among Class Members

A "community of interest" requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. *Fireside Bank v. Superior Court*, 40 Cal. 4th 1069, 1089 (2007) (citations and internal quotations omitted). Each factor to establish a community of interest exists among the Class Members.

1. Common Questions of Law and Fact Predominate

Where an employer's policies or conduct are uniformly directed at a class of employees, like here, the class-wide impact of the defendant's policies satisfies the commonality requirement. *See Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 331 (2004) (upholding class certification, where the common issue was whether the employer properly classified grocery store managers as exempt from California's overtime requirements). Here, Plaintiff challenges common pay policies raising predominant common questions of law and fact. Some of these common questions include: (1) whether Defendant misclassified Adjuncts as exempt; (2) whether the "Course Rate" constituted a piece rate; (3) whether the compensation set out in the Contracts covered work performed prior to the beginning of the Contract; (4) whether former Adjuncts were "discharged" for purposes of Labor Code § 201; (5) whether Chapman had a good faith belief that no wages were due at the time of discharge; (6) whether the wage statements Chapman issued to Adjuncts failed to comply with Labor Code § 226(a) and 226.2(a) since they lacked hours worked; (7) whether the alleged violation of § 226(a) was knowing and intentional; and whether Adjunct CMs suffered injury as a result. As to the WFH Class and PR Class, common questions include whether Defendant failed to reimburse home office expenses in violation of Labor Code § 2802; and whether Defendant's parking permit policy violated Labor Code § 450(a).

2. Plaintiff's Claims Are Typical of the Class Claims

The "test of typicality 'is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other Class Members have been injured by the same course of conduct.'" *See Seastrom v. Neways, Inc.*, 149 Cal. App. 4th 1496, 1502 (2007); 1-3 California Class Actions Practice and Procedure (2007) § 3.02 Here, Plaintiff's claims

are typical of the Class that they seek to represent because they were subject to the same policies/practices, suffered the same type of injury, and seeks the same types of relief.

3. Plaintiff and His Attorneys Will Adequately Represent the Class

“Adequacy of representation depends on whether the plaintiff’s attorney is qualified to conduct the proposed litigation and the plaintiff’s interests are not antagonistic to the interests of the class.” *Caro v. Procter & Gamble Co.*, 18 Cal. App. 4th 644, 669, n.21 (1993) (citations omitted). Both elements are satisfied here. Plaintiff’s Counsel are highly skilled and have extensive class action litigation experience. Plaintiff’s Counsel have been appointed class counsel in numerous class action suits and have represented thousands of adjunct instructors in similar unpaid wage cases since 2016, including numerous cases that were certified for settlement purposes. Hammond Decl. ¶ 6; Declaration of Craig Ackermann, filed herewith, at ¶¶ 4-10; Declaration of Jonathan Melmed, filed herewith, at ¶¶ 8-12. Plaintiff is committed to representing the interests of the Classes, do not have any conflicts with any CMs, and their interests are virtually coextensive with those of the CMs. Hammond Decl. ¶ 3; Ackermann Decl. at ¶ 3.

C. This Class Action Is a Superior Method of Adjudication

Plaintiff and the classes claims are based on Plaintiff’s contention that Defendant had uniform policies and/or practices that violated California law. All these claims involve common evidence including uniform contracts Chapman issued to Adjuncts, academic calendars, handbooks, compensation policies, payroll calendars, and wage statements; remote work policies, expense reimbursement policies; and parking permit policies. it would be entirely impractical and ineffective to litigate on an individual basis. *See Bufile v. Dollar Fin. Grp., Inc.*, 162 Cal. App. 4th 1193, 1208 (2008). The class action mechanism in this case will also allow Plaintiff and Settlement CMs to obtain redress for their relatively small claims, which would otherwise be impractical to litigate on an individual basis.

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

A. The Two Step Settlement Approval Process

Court approval of a class action settlement is a two-step process: (1) a preliminary review and contingent approval by the trial court, and (2) after notice has been distributed to the Class Members, a hearing and a detailed review that includes their responses. Manual for Complex Litigation (Fourth) § 21.6 (“Manual”); Cal. Rules of Court, Rule 3.769(a); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800-1801 (1996). Thus, preliminary approval of the settlement is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. *See, e.g.*, 4 Newberg on Class Actions § 11.25 (4th ed. 2002); Manual § 21.6. *C.f. North Cnty. Contractor’s Ass’n v. Touchstone Ins. Services*,

27 Cal. App. 4th 1085, 1094-1095 (1994). Applying the criteria for preliminary approval in this case reveals a substantial basis for granting the preliminary approval this Motion seeks.

B. The Settlement is Fair and Reasonable

In analyzing whether a settlement is fair and reasonable, courts consider a number of factors including “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, and . . . the reaction of the class members to the proposed settlement.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008) (quoting *Dunk*, 48 Cal. App. 4th at 1801). A settlement is initially “presumed to be fair” when (1) it “is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 52 (2008) (quoting *Dunk*, 48 Cal. App. 4th at 1802).

As discussed below, and as set out in the Hammond Declaration, the proposed Settlement is presumptively fair because (1) it was the product of serious, informed, and non-collusive negotiations, (2) the putative Class is represented by experienced counsel; and (3) the Parties investigated the claims, exchanged key information, and thus Plaintiff’s Counsel was able to make an informed recommendation about the proposed Settlement. In addition, the reasonableness of the Settlement is further supported by the strengths and risk of the claims asserted, the risk of maintaining class action status, the amount offered to settle, and the endorsement of experienced counsel. Together, all of these factors demonstrate that the proposed Settlement is preliminarily fair, reasonable, and adequate.

1. The Settlement Was a Product of Informed, Non-Collusive Negotiations

California courts recognize that “a presumption of fairness exists where . . . [a] settlement is reached through arms-length bargaining.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001) (citation omitted); *see also Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial court’s determination that settlement was “fair, reasonable and adequate” where the settlement “provided valuable benefits to the class . . . that were ‘particularly valuable in light of the risks plaintiff would have faced if she proceeded to litigate her case.’”).

Here, the settlement is a result of extensive settlement negotiations between the parties conducted at arm’s length and informed by substantial factual and legal investigation. Throughout this case, the Classes have been represented by counsel with extensive experience in wage and hour litigation, and, in particular, class actions alleging similar types of claims. Hammond Decl. ¶ 6; Ackermann Decl. ¶¶ 4-10;

Melmed Decl. ¶¶ 8-12. Class Counsel have spent a considerable amount of time prosecuting this case, including, but not limited to, drafting pleadings, meeting and conferring with Defendant's counsel, researching California law, analyzing documents and data produced by Defendant, conducting surveys of instructors, preparing for and attending a full-day mediation, and negotiating and finalizing the settlement agreement. Hammond Decl., ¶¶ 12-20. As discussed above, the mediation session was with a skilled, experienced mediator Tripper Ortman. *Id.* ¶ 34.

2. The Settlement Amount is Fair and Reasonable Considering the Risks

The amount of the settlement in light of the strength of the plaintiff's case is the most important "reasonableness" factor. *See Kullar*, 168 Cal. App. 4th at 130. In determining whether a settlement is fair, the court must "independently satisfy[] itself that the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." *Id.* at 129. This requires a record that "allows 'an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.'" *Munoz v. BCI Coca-Cola Bottling Co. of L.A.*, 186 Cal. App. 4th 399, 409 (2010) (quoting *Kullar*, 168 Cal. App. 4th at 120).

The \$1,150,000 Settlement will provide CMs with significant payments. The average gross recovery for Adjuncts is \$629.55 and the average net recovery for Adjuncts is \$362.54; average payments to the WFH Class Members of \$52.76 gross and \$30.84 net; and average payments to PR Class Members of \$19.12 gross and \$10.88 net. 94% of PR Class Members belong to one or more of the other Classes and are entitled to at least \$71.88 gross and \$41.72 net; and 425 Class Members are members of all three classes are entitled to payments of \$701.43 gross and \$404.26 net. Hammond Decl. ¶ 93. Because the Settlement is non-reversionary, Defendant will be paying the full Settlement amount, in addition to the employer-side payroll taxes. Checks will be automatically mailed to all CMs who do not opt out.

The settlement amount compares favorably with Plaintiff's Counsel's estimated exposure and value of CMs' claims, as discussed below and in greater detail in Hammond Declaration. Plaintiff's Counsel estimates that a complete victory at trial would result in the maximum and realistic recoveries for each of the classes listed on the chart below (excluding PAGA), and the allocation of the GSA to each class' claims represent appropriate percentages of the maximum and realistic exposures. Hammond Decl. ¶ 85.

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Class	Max Exposure	GSA Allocation	% Max	Realistic Exposure	% Realistic
Adjunct	\$3,634,204	\$865,000 (75%)	24%	\$1,318,274	66%
WFH	\$1,165,860	\$250,000 (22%)	21%	\$373,075	76%
PR	\$189,913	\$35,000 (3%)	18%	\$53,413	66%
Totals	\$4,989,976	\$1,150,000	23%	\$1,744,722	66%

Although Plaintiff believes that the Classes have strong claims, he also acknowledges the serious obstacles as to both the certification and the merits of each claim, which warrant a settlement at less than “complete victory” value. The major risks applicable to class claims are addressed below, followed by a claim-by-claim comparison of the estimated potential recovery and discounted settlement amount attributable to each claim for each class.

(a) Arbitration Defense

Defendant vigorously contended that Plaintiff’s class claims are barred by the class action waiver included in the arbitration agreement it required each employee to agree to as part of their employment. Hammond Decl. ¶ 35. During the Adjunct Class Period, each Adjunct contract contained the following clause:

“Faculty Member and the University agree that, to the fullest extent permitted by law, (a) any claim or dispute of any kind arising out of this contract or Faculty Members’ employment with the University will be resolved exclusively by binding arbitration... Neither Faculty Member nor the University shall be entitled to join or consolidate in arbitration any claim by or against other current or former University employees, nor bring in arbitration any claim as a representative or member of a class, and the arbitrator shall not be authorized to preside over any class, collective or representative claims.”

During the PR Class and WFH Class Periods, each CM signed an arbitration agreement that stated as follows:

“The employee named below (the “Employee”) and Chapman University (the “University”) agree that, to the fullest extent permitted by law, (a) any claim or dispute of any kind arising out of Employee’s employment with the University, which Employee could otherwise bring in court, will be resolved exclusively by binding arbitration (b) to dismiss any civil action brought by that party in contravention of this agreement to arbitrate and (c) THIS PROVISION OPERATES AS A WAIVER TO CIVIL TRIAL BY JURY OF ALL SUCH CLAIMS... Neither Employee nor the University shall be entitled to join or consolidate in arbitration any claim by or against other current or former University employees, nor bring in arbitration any claim as a representative or member of a class, and the arbitrator shall not be authorized to preside over any class, collective or representative claims.”

Hammond Decl. ¶ 36-37. Defendant contended that the Court would find its arbitration agreement, including the class action waiver, enforceable and that Plaintiff’s class claims would be barred. *AT&T*

1 *Mobility LLC v. Concepcion* (2011) 563 U.S. 333. Plaintiff applied a 50% discount to all class claims in
2 valuing the case for settlement based on Chapman's contention that Plaintiff would not be able to litigate
3 claims on behalf of the class, but would be compelled to individual arbitration instead. Hammond Decl.
4 ¶ 38.

5 **(b) Merits and Certification Defenses**

6 In addition to the major risk posed by the Arbitration agreement, Plaintiff also faced the following
7 actual and potential arguments to each of his claims.

8 **ii. Adjunct Wage Statement Claim (Lab. Code §§ 226 (a), (e), and 204):** Plaintiff alleges that
9 during the Adjunct Class Period, Adjunct CMs, as non-exempt piece rate employees, were entitled to
10 wage statements that listed their hours worked, hourly rate, and piece rate information pursuant to Labor
11 Code §§ 226(a)(2), (3), (9) and 226.2 (a). Hammond Decl. ¶ 47. However, Plaintiff alleges Chapman did
12 not track Adjunct CMs' hours, and did not include on their wage statements any entries for hours worked
13 or applicable hourly rates, or piece-rate information. Plaintiff also contended that Chapman was required,
14 under Labor Code § 226(a) and 204, to pay Adjunct CMs at least twice per month on regular pay days
15 designated in advance by Defendant. Decl. Id. ¶ 48. However, Chapman paid Adjunct CMs only once per
16 month. Plaintiff calculated Defendant's maximum liability under Labor Code § 226(e) as **\$305,729**.
17 Hammond Decl. ¶ 50.

18 **Class Certification Risk:** Plaintiff believes that the certification risk as to the wage statement
19 claim is minimal because wage statement claims are particularly well-suited to class certification. See
20 *Lubin v. The Wackenhut Corp.*, 5 Cal. App. 5th 926 (2016); *see also Torres v. Air to Ground Services,*
21 *Inc.*, 300 F.R.D. 386, 403 (C.D. Cal. 2014). Thus, Plaintiff applied only a nominal discount of 10%.
22 Hammond Decl. ¶ 51.

23 **Merits Risk:** In its answer, Defendant asserted that Adjunct CMs were exempt employees, thus
24 were not entitled to wage statements that included a breakdown of their hours and applicable hourly rates
25 in effect or piece-rate information or to receive wage statements twice per month.³ Hammond Decl. ¶ 52.
26 Having litigated similar claims, Plaintiff's Counsel believes this argument is based on the premise that
27 the minimum salary required to be exempt in California can be prorated for part-time employment. Id.
28 Chapman also could have argued that Adjunct CMs were paid a salary, not by the piece, because they
received the full amount of pay in each paycheck regardless of the quantity or quality of the work
performed. Id. ¶ 53. Therefore, Chapman argued that it did issue accurate wage statements and properly

³ Labor Code § 204 that "salaries of executive, administrative, and professional employees of employers covered by the Fair Labor Standards Act...may be paid once a month..." Hammond Decl. ¶ 54.

1 issued only one pay check per month. Id. ¶ 53-54.

2 Defendant also could have contended that the maximum applicable statutory penalty was the
3 initial penalty of \$50 per wage statement because Plaintiff had not established that Defendant ever
4 received notice from the Labor Commissioner or a court, and so there are arguably no “subsequent”
5 violations. *Robison v. Open Top Sightseeing San Francisco, LLC*, 2018 U.S. Dist. LEXIS 24556, at **52-
6 58 (N.D. Cal. Feb 14, 2018); *Bernstein v. Virgin Am., Inc.*, 2021 U.S. App. LEXIS 6641, *35-36 (9th Cir.
7 Mar. 8, 2021) (holding that “subsequent” violations for purposes of PAGA do not occur until employer
8 has been notified that it is violating a Labor Code provision).

9 Plaintiff believed the merits risk was small on Defendant’s contentions that CMs were exempt in
10 light of clear guidance from the DLSE and a December 3, 1999 memorandum from the Chief Legal
11 Counsel for the Labor Commissioner expressly stating that pro-rating a minimum monthly salary for part-
12 time employment is not permissible; or on Defendant’s contentions that Adjuncts were salaried; and
13 accordingly applied a modest 10% discount for the merits’ defenses. Hence, Plaintiff calculated
14 Chapman’s realistic exposure after applying discounts for this claim as **\$247,641**. Id. ¶ 56.

15 **iii. Adjunct Unpaid Wages Claim (Labor Code §§ 1194 / 226.2):** As stated above, Plaintiff
16 alleges that during the Class Period, Chapman paid Adjunct CMs a fixed amount per course, which was
17 a piece rate with the “piece” being the course. *See Negri*, 216 Cal. App. 4th at 399. Defendant was
18 therefore required, but failed, to pay Adjunct CMs hourly and separately from the piece for the time spent
19 performing “non-productive” tasks (such as preparing for the first day of classes, preparing for classes
20 during the semester, grading, office hours, and meetings) pursuant to Labor Code § 226.2 (a)(1).
21 Hammond Decl. ¶ 57. During the discovery phase, Plaintiff reviewed and analyzed the Contracts issued
22 to Adjunct CMs, and concluded that he could only show that Adjunct CMs were not paid for the work
23 performed prior to the first day of classes because the uniform Contracts incorporated the Lecturer
24 Handbook, which in turn listed tasks that Adjunct CMs were expected to complete in addition to teaching
25 the course. Id. ¶ 58. Plaintiff estimated Defendant’s maximum exposure on unpaid wage claims under
26 Labor Code §§ 226.2 and 1194 as **\$646,891**. Id. ¶ 59.

27 **Class Certification:** Defendant argued that there was risk of non-certification on the theory that
28 the course rate included all the activities performed prior to the Course and that the amount of time each
Adjunct CM spent on pre-course work would lead to individualized issues. Hammond Decl. ¶ 60. In
addition, Defendant contended that Adjunct CMs’ compensation was a salary that incorporated all duties,
including prior to the first day of the course. Plaintiff countered that any variability as to the amount of
time spent preparing to teach is a matter of damages, and therefore does not impact certification. Id. As

1 to the salary argument, Plaintiff argued that what the salary covers is a matter of contract interpretation
2 that is uniquely suitable for class certification. See *Rodman v. Safeway, Inc.*, No. 11-cv-03003-JST, 2014
3 U.S. Dist. LEXIS 31438, at *25 (N.D. Cal. Mar. 9, 2014) (holding that “claims arising from
4 interpretations of a form contract appear to present the classic case for treatment as a class action”) (citing
5 cases). Plaintiff believed these arguments warranted a 10% discount. Hammond Decl. ¶ 60.

6 **Merits:** As to the merits, Defendant also argued that a court would find, as a matter of law, that
7 the piece-rate built into it the hours worked before the start of the contract so there were no unpaid wages;
8 and that the average pre-course work by Adjunct CMs was much less than the estimated by Plaintiff,
9 especially for the courses taught by Adjunct CMs that were repeat courses that required little preparation
10 time. Hammond Decl. ¶ 61. Plaintiff believed that a 25% discount was warranted based on these
11 arguments. After applying discounts, Plaintiff calculated Chapman’s realistic exposure on the unpaid
12 wage claim is **\$436,652**. Id. ¶ 61.

13 **iv. Rest Break Claim (Labor Code §§ 226.7 and 226.2):** Plaintiff alleges that Defendant
14 was required, but failed, to pay Adjunct CMs hourly and separately from the piece for the time spent on
15 rest breaks pursuant to Labor Code § 226.2 (a)(1). Thus, Adjunct CMs who worked 3.5 hours or more
16 are entitled to premium (at one hour of their average pay) for each unpaid rest break. See *Amaro v.*
17 *Gerawan Farming, Inc.*, No. 1:14-cv-00147-DAD-SAB, 2016 U.S. Dist. LEXIS 112540. Plaintiff
18 calculated Chapman’s exposure on this claim as **\$425,520**. Hammond Decl. ¶ 62.

19 **Class Certification:** Defendant contended that even if Adjunct CMs were paid on a piece-rate,
20 the piece-rate included time spent on rest breaks, and individualized issues would predominate because
21 whether non-teaching time was included in the piece-rate would depend on each Adjunct CM’s
22 understanding of what the piece covered. Hammond Decl. ¶ 63. Plaintiff applied a nominal 10% discount
23 for these argument, as he believed they had little chance of success because California prohibits an
24 employer from building rest break pay into piece-rate (*Bluford v. Safeway Inc.*, 216 Cal. App. 4th 864,
25 871-72 (2013)) and compensation owed and/or what piece prate includes is a matter of contract and/or
26 interpretation of what the piece rate formula actually covers, not individual understanding (*Cardenas v.*
27 *McLane Foodservices, Inc.*, 796 F. Supp. 2d 1246, 1252-53 (C.D. Cal. Jun. 23, 2011).

28 **Merits:** As to the merits, Defendant contended that Plaintiff and Adjunct CMs were either exempt
employees, or were paid on a salary basis and were authorized and permitted their rest breaks. Hammond
Decl. ¶ 64. As explained above, Plaintiff believed that there was little chance of Defendant succeeding
on the argument that Adjunct CMs were exempt, but recognized some risk on the argument the course
rate was a salary because it appeared that Adjunct CMs did receive a predetermined amount each pay

1 period that was not subject to change within each pay period based on the number of hours taught. Thus,
2 Plaintiff believed this argument warranted a further 10% discount. Id. After applying discounts,
3 Chapman’s realistic exposure on the rest break claim was reduced to **\$344,671**. Id. ¶ 65.

4 v. **Meal Break Claims (Labor Code §§ 226.7 and 512):** Plaintiff alleged that, as non-
5 exempt employees, Adjunct CMs were entitled to an off-duty 30-minute meal break before the end of the
6 fifth hour of each shift pursuant to Labor Code § 512. Plaintiff alleged that Defendant imposed uniform
7 policies and/or practices that impeded Adjunct CMs’ ability to take off-duty meal breaks, including the
8 requirement and/or expectation for Adjunct CMs to be available to students immediately before and after
9 class, and to answer students’ questions during class breaks. Plaintiff calculated Chapman’s maximum
10 exposure on this claim as **\$48,640**. Hammond Decl. ¶ 66.

11 **Class Certification:** Plaintiff applied a 25% discount for the risks of non-certification given the
12 individualized issues resulting from each CM teaching different courses on different days, with different
13 class lengths and different class breaks. Hammond Decl. ¶ 67; See *Lampe v. Queen of the Valley Medical*
14 *Center*, 19 Cal. App. 5th 832, 228 (“To determine why each employee did not take their first meal break
after five hours would require an individualized determination and review of individual employee files
and pay stubs”).

15 **Merits:** Plaintiff applied a 50% discount based on the arguments that Adjunct CM’s were
16 permitted to and regularly did take compliant meal periods; and that the assumed 100% violation rate was
17 highly unrealistic, and that Adjunct CMs controlled their own class schedules and if they failed to take a
18 meal break it was as a matter of choice. Hammond Decl. ¶ 68. After applying discounts, Chapman’s
realistic exposure was reduced to **\$18,240**. Id.

19 vi. **Waiting Time Penalties (Labor Code §§ 201-203):** Plaintiff alleged that Defendant
20 employed Adjunct CMs on a contract basis for limited duration. Hammond Decl. ¶ 69. The Contract
21 provided the start and end date of the teaching appointment and stated “*This Contract will expire on [last*
22 *day of exams]... Faculty Member acknowledges that even if teaching currently or having taught a class*
23 *or classes in the past, Faculty Member has no right, expectation, or promise to teach at Chapman beyond*
24 *the period of time specified in this Contract.*” Plaintiff therefore contended that Adjunct CMs who did
25 not teach courses in consecutive terms were discharged at the end of the contract, for purposes of Labor
26 Code § 201 and, as a result, are entitled to 30 days of wages as waiting time penalties. Plaintiff calculated
Chapman’s maximum liability for waiting time penalties as **\$2,207,424**. Id. ¶ 70.

Class Certification Risk: Plaintiff applied a nominal 10% discount for the risk on class certification on the grounds that the vast majority of Adjunct CMs knew that they would teach the same course each term of each year and thus individual issues would predominate. Hammond Decl. ¶ 71.

Merits Risk: Chapman contended that Adjunct CMs were not entitled to waiting time penalties because they enjoyed continuous employment and as a matter of contractual interpretation there was no discharge. Id. ¶ 72. Chapman also contended that even if Plaintiff could show there was a discharge, it would not be found liable because its actions were not willful, and it has a good faith argument that the wages were not due. *See Nordstrom Com'n Cases*, 186 Cal. App. 4th 576, 584 (2010) (trial court did not abuse its discretion in discounting the penalties on a § 203 claim because defendant could avoid the penalties by showing that a “good faith dispute” existed regarding the claimed wages). Plaintiff assigned a 20% discount for this risk. Hammond Decl. ¶ 72. After applying discounts, Chapman’s exposure on the waiting time penalties claim is **\$1,589,345**. Id.

vii. Total Exposure on Adjunct CM Claims: Plaintiff calculated Chapman’s maximum exposure on the Adjunct Class claims (excluding PAGA penalties) as \$3,634,204. Hammond Decl. ¶ 73. After discounts, Plaintiff estimated Defendant’s *realistic* exposure as \$2,636,548, as follows:

Labor Code Section	Maximum Damages	Realistic Exposure
Wage Statements (§ 226(e))	\$305,729	\$247,641
Unpaid Wages (§§ 226.2 / 1194)	\$646,891	\$436,652
Rest Breaks (§ 226.7)	\$425,520	\$344,671
Meal Breaks (§ 512 and 226.7)	\$48,640	\$18,240
Waiting Time Penalties (§ 203)	\$2,207,424	\$1,589,345
Total	\$3,634,204	\$2,636,548

Plaintiff then applied a 50% discount to the realistic exposure for the serious risk presented by Chapman’s arbitration agreement which reduced Chapman’s realistic liability to **\$1,318,274**. Id. ¶ 74. The \$865,000 of the GSA allocated to Adjunct CMs represents 24% of Defendant’s estimated maximum exposure on Adjunct CM’s claims; and 66% of the realistic exposure. Id.

viii. WFH Class Claims (Lab. Code § 2802): Plaintiff alleged that, starting on March 19, 2020, as a result of COVID-19, Chapman started requiring and expecting WFH Class Members to work remotely, and to have an internet connection and cellular phone in order to stay connected with Chapman. Plaintiff alleged that Defendant had no policy of allowing WFH Class Members to request reimbursement for these expenses and did not reimburse WFH Class Members for such expenses, in violation of Labor

Code § 2802. Plaintiff calculated Defendant’s maximum liability for unreimbursed business expenses as **\$1,165,860**. Id. ¶ 76.

Class Certification Risk: Chapman contended that individualized issues would predominate including whether any expenses were actually incurred by WFH CMs, whether those expenses were reasonable, and whether Chapman was aware that WFH CMs incurred such expenses —the answers to all of those questions will vary on a case-by-case basis. See *Dugan v. Ashley Furniture Indus.*, No. SA CV 16-1125 PA (FFMx), 2016 U.S. Dist. LEXIS 189011, at *8 (C.D. Cal. Nov. 29, 2016) (refusing to certify plaintiff’s cell phone business expense claim where land lines were made available by the employer, holding that there were individualized inquiries as to number of phones at each location, number of employees at each location, and the motivation of each employee who opted to use his or her own cell phone); *Morgan v. Wet Seal, Inc.*, 210 Cal. App. 4th 1341, 1356-57 (2012) (denying certification on expense reimbursement claim where employees were not explicitly “required” to incur expenses, holding individualized inquiries would be necessary to determine what each manager stated on the issue, whether the employee’s interpretation was reasonable, and whether the employee then incurred expenses). Hammond Decl. ¶ 77. Plaintiff applied a 20% discount for class certification based on this argument.

Merits Risk: Chapman contended that during the WFH Class Period, its Working Remotely Policy directed WFH CMs to submit requests for home internet reimbursement to Chapman; provided WFH CMs with information on how to obtain free internet; provided laptops and tablets for WFH CMs to use; and provided WFH CMs with software that allowed them to make and receive phone calls for free. Moreover, Chapman contended that its cell reimbursement policy, applicable at are least some WFH CMs, provided for cell phone reimbursement. Therefore, Chapman contended that even if personal home internet or cell phone costs were incurred, these were voluntary. Plaintiff applied a further discount of 20% for the merits’ argument. After applying discounts, Chapman’s exposure on this claim is \$746,150. Hammond Decl. ¶ 78.

Total Exposure on WFH CMs Claims: Plaintiff then applied a further 50% discount to the realistic exposure for the major risk presented by Chapman’s arbitration agreement which reduced Chapman’s realistic liability to **\$373,075**. Before discounts, the \$250,000 of the GSA allocated to WFH Class Members represents 21% of Chapman’s maximum exposure of \$1,165,860; after discounts, it represents **67%** of Defendant’s realistic exposure. Id. ¶ 79.

ix. PR Class Claims (Lab. Code § 450 and 2802): Labor Code § 450 provides: “No employer, or agent or officer thereof, or other person, may compel or coerce any employee, or applicant for

1 employment, to patronize his or her employer, or any other person, in the purchase of anything of value.”
2 Plaintiff alleged that during the PR Class Period, Chapman maintained a parking permit policy requiring
3 PR Class Members to park in university owned or operated parking areas and to purchase an annual
4 parking permit from Chapman, in violation of Labor Code § 450. Plaintiff calculated Defendant’s
maximum liability as **\$189,912**. Hammond Decl. ¶ 81.

5 **Class Certification Risks:** Chapman contended that individualized issues would predominate
6 including (1) whether Chapman requires employees to purchase parking permits; (2) whether Chapman
7 coerced or compelled employees to purchase permits; and (3) whether purchasing a permit was a
8 necessary expenditure. *Morgan v. Wet Seal, Inc.*, 210 Cal. App. 4th at 1356. Plaintiff applied a 25%
discount for class certification based on this argument. Hammond Decl. ¶ 82.

9 **Merits Risk:** Defendant contended that there was no written policy requiring PR Class
10 Members to drive to campus and any PR Class Member who purchased a parking permit did so
11 voluntarily. Hammond Decl. ¶ 83. Therefore, even if parking permit costs were incurred, these were
12 voluntary and not “compelled or coerced” as required under Labor Code § 450. Plaintiff applied a 25%
13 discount for the merits’ argument. After applying discounts, Chapman’s exposure on this claim is
14 \$106,826. Id.

15 **Total Exposure on PR CMs Claims:** Plaintiff then applied a further 50% discount to the
16 realistic exposure for the major risk presented by Chapman’s arbitration agreement which reduced
17 Chapman’s realistic liability to **\$53,413**. The \$35,000 of the GSA allocated to PR class claims represents
18 18% of Defendant’s maximum exposure on PR CM’s claims, and 66% of their realistic exposure.
Hammond Decl. ¶ 84.

19 **x. Additional Risk Posed by Ministerial Exception:** In its Answer, Defendant contended that
20 Plaintiff’s claims are barred by the First Amendment’s “ministerial exception.” The First Amendment
21 protects the “right of religious institutions to decide matters ‘of faith and doctrine’ without government
22 intrusion.” *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020) (quoting *Hosanna-*
23 *Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171, 186 (2012)). In *Hosanna-Tabor*
24 *Evangelical Lutheran Church & Sch. v. EEOC*, the Supreme Court held that the First Amendment’s
25 Establishment and Free Exercise clauses bar the government from interfering with the decisions of a
26 religious group in employment issues. *Id.* at *42-43. On July 8, 2020, the Supreme Court issued *Our Lady*
27 *of Guadalupe Sch. v. Morrissey-Berru*, 140. S. Ct. 2049 (2020), reiterating that courts must look, as
28 *Hosanna-Tabor* did, not just at an employee’s title, but also his or her duties, in deciding whether religious
instruction is an important function of the job and thus whether the “ministerial exception” applies.

Therefore, courts recognize a “ministerial exception” to the general rule that churches and religious institutions adhere to state and federal employment laws. *Alcazar v. Corp. of the Catholic Archbishop*, 627 F.3d 1288, 1290, 1293 (9th Cir. 2010) (holding ministerial exception bars Washington’s minimum wage act).

Defendant asserted that it is affiliated with the Christian Church and the Court would find, at a minimum, Adjunct CMs were ministers because Chapman relies on them to support and model Chapman’s Christian values, and the ministerial exception would bar Plaintiff’s adjunct wage claims. Hammond Decl. ¶ 43. Although Plaintiff did not believe that Defendant would likely succeed in having this defense apply, if Defendant’s contention prevailed, Adjunct CMs would recover nothing at all. Id. ¶ 44. Defendant also contended that even if the ministerial exception were not a complete defense to Plaintiff’s wage and hour claims it would still result in a denial of class certification because a court would have to consider various factors in deciding whether the exception applies which would raise a host of individual issues that would need to be resolved on an employee by employee basis. Hammond Decl. ¶ 45.

(c) PAGA Allocation is Fair and Adequate

Plaintiff calculated Defendant’s maximum exposure to PAGA Penalties as \$302,650 for the Adjunct PAGA Period;⁴ \$183,200 for the Parking Reimbursement PAGA Period; and \$1,165,860 for the WFH Class; for a total of **\$1,651,620**. Hammond Decl. ¶ 86-88. The \$50,000 allocated to PAGA penalties represents 3% of Defendant’s total exposure to PAGA penalties which is similar to (or more than) PAGA allocations approved in similar Settlements. Id. ¶ 89. This allocation is fair and reasonable for several reasons.

First, Chapman contended that it operated in good faith and reasonably believed it was in compliance with the Labor Code; and overhauled its adjunct compensation policies at issue in this lawsuit in January 2020 to bring them into compliance with the Labor Code; stopped enforcing its Parking Reimbursement Policy in March 2020; and is in the process of drafting a reimbursement policy that will be applied retroactively to July 1, 2021. Id. ¶ 89. Thus, the lawsuit fulfills the purpose of PAGA which is to ‘remediate present violations and deter future ones,’ not to redress employees’ injuries.” *Kim v. Reins*

⁴ Plaintiff calculated PAGA penalties using \$100 per pay check under Labor Code § 2699 (because Defendant never received notice from the Labor Commissioner or the Court so there are arguably no “subsequent” violations, see *Bernstein v. Virgin Am., Inc.*, 2021 U.S. App. LEXIS 6641, *35-36; and assumed that the court would not allow “stacking” of PAGA penalties for each separate Labor Code violations. *Castillo v. ADT, LLC*, 2017 U.S. Dist. LEXIS 10579, at *11 (E.D. Cal. Jan. 24, 2017); *Smith v. Lux Retail North Am., Inc.*, 2013 U.S. Dist. LEXIS 83562)

(footnote continued)

1 *International California, Inc.*, 9 Cal. 5th 73, 86 (2020); *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037
2 (2016) (significant reduction to PAGA penalties appropriate because the law was not clear and there was
3 thus no deliberate violation).⁵ In light of these changes, the Court would likely reduce any award of PAGA
4 penalties as “unjust, arbitrary and oppressive, or confiscatory” under Labor Code § 2699 (i). Hammond
Decl. ¶ 89.

5 Second, the Settlement provides significant relief for the classes, which is what courts look at
6 when assessing amount attributed to PAGA penalties. *O’Connor v. Uber Techs., Inc.*, No. 201 F. Supp.
7 3d 1110, 1134 (N.D. Cal. Aug. 18, 2016) (where settlement for the class claims is robust, the purpose of
8 PAGA may be fulfilled because by providing fair compensation to class members, the settlement has a
9 deterrent effect on defendant and other employers, thus fulfilling the purpose of PAGA). In *Gola v.*
10 *University of San Francisco*, No. CGC-18-565018 (San Francisco Cnty. Super. Ct. March 3, 2021) a
11 pending case brought by HammondLaw on behalf of adjunct instructors, the court found that substantial
12 monetary relief in form of statutory penalties under § 226(e) (and fees and costs plaintiff would seek)
13 acted as a sufficient punishment and deterrent, and awarded only 15% of the full PAGA penalties—and
14 this was a case where defendant did not have a good faith defense and did not change its practices to
comply after the lawsuit was filed. Hammond Decl. ¶ 89.

15 Third, Chapman contended that PAGA claims would be found unmanageable because only CMs
16 who actually incurred unpaid wages, unpaid premium pay, or unreimbursed expenses during a particular
17 pay period could recover PAGA penalties, and there is no manageable way to determine who was entitled
18 to penalties. Hammond Decl. ¶ 91; *Raphael v. Tesoro Ref & Mktg. Co.*, 2015 U.S. Dist. LEXIS 130532,
19 at *5 (C.D. Cal. Sept. 25, 2015). Further, in order to recover any PAGA penalties, Plaintiff would be
20 required at trial to prove that each Aggrieved Employee suffered a violation for each pay period the
21 employee worked, which would be difficult in light of Defendant’s contentions on the merits discussed
22 above. Hammond Decl. ¶ 91; *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10
(C.D. Cal. 2011) (“Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of
23 individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant.”).

24 Finally, the \$50,000 allocated to PAGA - 3% of Chapman’s potential PAGA exposure - is similar

25 ⁵ Indeed, in an *Amicus Curiae* Brief filed June 16, 2017 in *Steven Price v. Uber Technologies*, Case No.
26 BC554512 (L.A. Superior Ct.), the Labor Commissioner stated that the main purpose of PAGA penalties
27 is “in helping the Labor Commissioner discharge her mandate to: vigorously enforce minimum labor
28 standards in order to ensure employees are not required or permitted to work under substandard unlawful
conditions or for employers that have not secured the payment of compensation, and to protect employers
who comply with the law from those who attempt to gain a competitive advantage at the expense of their
workers by failing to comply with minimum labor standards. Cal. Labor Code §90.5(a).”

1 to (or more than) PAGA allocations approved in similar Settlements that were recently approved
2 including *Pillow et al. v. Pepperdine University*, Case No. 19STCV33162 (Los Angeles Superior
3 Court)(July 28, 2021)(approving PAGA allocation of \$15,000 representing 1% of the maximum
4 \$1,619,200 in PAGA penalties); *Moore, et al v Notre Dame De Namur University*, Case No. 19-CIV-
5 04765 (San Mateo County Superior Court) (July 1, 2021) (approving PAGA allocation equal to 1.9% of
6 maximum \$631,300 in PAGA penalties); *Mooiman, et al. v Saint Mary's College of California*, Case No.
7 C19-02092 (Contra Costa County Superior Court) (June 10, 2021) (approving PAGA allocation equal to
8 1% of the maximum \$649,200 in PAGA penalties where “the record indicates that defendant changed
9 many of the policies at issue before the action was brought, that there is a substantial monetary award
10 which in part serves the deterrent function of a penalty, and that defendant had some arguments of “good
11 faith,” that would mitigate penalties”); *Peng v The President and Board of Trustees of Santa Clara*
12 *College*, Case No. 19CV348190 (Santa Clara County Superior Court) (approving PAGA allocation equal
13 to 3.5% of maximum \$709,700 in PAGA penalties); *Morse v Fresno Pacific University*, Case No. 19-
14 CV-04350 (Merced County Superior Court) (April 6, 2021) (approving PAGA allocation equal to 2% of
15 maximum \$1,194,800 in PAGA penalties). Hammond Decl. ¶ 92.

16 **3. The Risk, Expense, Complexity and Likely Duration of Further Litigation**

17 Defendant strongly disagreed as to the merits of Plaintiff’s claims and is convinced that Plaintiff
18 has no right to seek class-wide relief at all in light of its arbitration agreement. Plaintiff also faced the
19 risk of losing on the ministerial exception. Assuming some of the claims proceeded to trial, the losing
20 party would likely appeal, given that some of the central legal issues in this case have not been
21 conclusively addressed by an appellate court. This process would take years to resolve under normal
22 circumstances, and even longer as a result of the Covid-19 shutdown. Instead, this settlement provides
23 an early resolution of a dispute, and CMs will obtain a recovery in the relatively near future if the
24 settlement is finally approved.

25 **4. Extent of Discovery Completed and Stage of the Proceedings**

26 As described in the Hammond Decl. and above, the parties have engaged in extensive discovery,
27 and were adequately informed to make the decision to settle this case on the proposed terms. Hammond
28 Decl. ¶¶ 17-20.

5. Views of Experienced Counsel Support the Reasonableness of the Settlement

As discussed above, Class Counsel have extensive experience in class action litigation, and, in
particular wage-and-hour class actions on behalf of adjunct instructors, and have been determined by
numerous courts to be adequate class counsel. Hammond Decl. ¶¶ 6-11; Ackermann Decl. ¶¶ 4-10;

1 Melmed Decl. ¶¶ 8-12. Class Counsel have represented thousands of adjunct instructors' cases since
2 2016, and HammondLaw recently successfully litigated one such case all the way through trial.
3 Hammond Decl. ¶ 6. These cases – challenging the long-standing industry-wide practice of classifying
4 adjuncts as non-exempt and not paying them for all hours worked – have led to an overhaul of these
practices in the industry. Id.

5 Class Counsel considers the settlement to be fair, reasonable and adequate. Hammond Decl. ¶ 93;
6 Ackermann Decl. ¶ 12; Melmed Decl. ¶ 3. The average recovery for Adjunct CMs is \$629.55 gross and
7 \$362.54 net; average payments to the WFH Class Members is \$52.76 gross and \$30.84 net; and average
8 payments to PR Class Members is \$19.12 gross and \$10.88 net. Moreover, 94% of PR Class Members
9 are members of at least one other class and are entitled to payments of *at least* \$71.88 gross and \$41.72
10 net; and 425 Class Members are members of all three classes and are entitled to payments of \$701.43
11 gross and \$404.26 net. Hammond Decl. ¶ 93. These are substantial amounts when considering
Defendant's arbitration agreement which could have barred any class claims.

12 **6. Reaction of the Class Members to The Proposed Settlement**

13 It is premature to address this factor since notice has not yet been sent out. However, the
14 settlement confers substantial benefit on CMs who entered into arbitration agreements with class action
15 waivers, and is reasonably tailors each CMs' payment amount to the number of weeks they worked for
Chapman and/or the damages they incurred. SA §§ 5.1.1 – 5.1.3.

16 **C. The Proposed Class Notice Content and Procedure Are Adequate**

17 Constitutional due process requires that class members be provided with notice sufficient to give
18 them an opportunity to be heard in the proceedings. *Mullane v. Central Hanover Bank & Trust*, 339 U.S.
19 306, 314 (1950). Proper notice must provide class members with sufficient information to make an
20 informed decision to accept, opt out or object to the settlement. *See Wershba*, 91 Cal. App. 4th at 251-
21 252. Here, the proposed Notice meets these standards since it provides all the information a reasonable
22 person would need to make a fully informed decision about the settlement: (1) the material terms of the
23 settlement, (2) the proposed fees and costs of Class Counsel and costs of settlement administration, (3)
24 the proposed Service Award; (4) how CMs' may opt out of, or object to the Settlement; (5) the fact that
the Judgment will bind CMs who do not opt out, (6) each CM's proposed allocation; (7) details about the
25 court hearing on settlement approval, and (8) how CMs can obtain additional information. *See* Cal. Rules
26 of Court, Rule 3.766 and **Exhibit 1** to the SA.

27 The procedure for distribution of notice by first class mail with skip tracing for returned mail (SA
28 §§ 10.1.2-10.1.4) meets the standard of having "a reasonable chance of reaching a substantial percentage

of the class members.” *Cartt v. Superior Court*, 50 Cal. App. 3d 960, 974 (1975); *see also Wershba*, 91 Cal. App. 4th at 251. As such, the Notice is likely to reach most, if not all, Class Members. Therefore, the Court should approve the Notice.

D. The Service Award for Class Representative Is Reasonable

Plaintiff will request a Service Award of \$5,000 to recognize the time and effort expended on behalf of the Class, and the general release he is giving Defendant. Hammond Decl. ¶ 110. The requested award falls well within the range of incentive payments typically awarded in similar class actions. *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming incentive awards of \$10,000); *Pereltsvaig v. The Leland Stanford Jr. University*, Case No. 17-CV-311521 (Santa Clara Cty. Super. Ct. Jan. 4, 2019) (awarding \$7,500 incentive award).

E. The Requested Attorneys’ Fees and Costs Are Reasonable

In addition, Plaintiff’s counsel will request attorneys’ fees of not more than \$383,333 (*i.e.*, 1/3 of the gross settlement). SA § 6. This fee percentage amount is fair, reasonable and is within the range typically approved in similar class actions by California courts. *See, e.g., Laffitte v. Robert Half Internat’l Inc.*, 1 Cal. 5th 480, 487, 596 (2016) (affirming a fee award representing 33% of the fund).⁶ Plaintiff will also request reimbursement of up to \$25,000 for actual out-of-pocket litigation costs incurred by Class Counsel. SA § 6. Hammond Decl. ¶ 95.

If the Court grants preliminary approval, Class Counsel anticipates filing a Motion for Attorneys’ Fees and Costs that will be scheduled to be heard following the notice process. Id. ¶ 96.

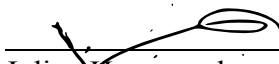
VI. CONCLUSION

The settlement provides substantial relief for Class Members and easily passes the *Kullar* analysis. Accordingly, Plaintiff respectfully requests that the Court preliminarily approve the settlement, approve the proposed Class Notice, and schedule a final approval hearing.

DATED: August 9, 2021

Respectfully submitted,

HAMMONDLAW, P.C.


Julian Hammond

Attorneys for Plaintiff and the Putative Classes

⁶ The Court need not decide now the amount of attorneys’ fees and expenses or service awards to award. Rather, at the current preliminary approval stage, the Court need only satisfy itself that the overall settlement is within a range that could warrant final approval. That standard is met here.