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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ORANGE

CHERYL BURLEIGH, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

BRANDMAN UNIVERSITY, a California
Non-Profit Corporation,

Defendant.

CASE NO. 30-2020-01172801-CU-OE-CXC

**DECLARATION OF JULIAN HAMMOND
IN SUPPORT OF PLAINTIFF'S MOTION
FOR ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: April 15, 2022
Time: 10:00 a.m.
Dept. CX105
Reservation No. 73707424

1 I, Julian Hammond, declare as follows:

2 I. INTRODUCTION

3 1. I am over the age of 18 and have personal knowledge of the facts set forth in this
4 declaration and could and would testify competently to them.

5 2. I am a member in good standing of the Bar of the State of California. I am licensed to
6 practice before all courts in the State of California.¹

7 3. I am the principal of the law firm HammondLaw, P.C. (“HammondLaw” or “Class
8 Counsel”) and counsel for the named Plaintiff Cheryl Burleigh (“Plaintiff”) and two settlement classes:
9 (a) 1,779 “Adjunct Class Members” who were employed by Defendant in California as part-time adjunct
10 instructors, were not paid in compliance with Labor Code Section 515.7, and were not paid on an hourly
11 basis, at any time during the period from December 2, 2016 through August 22, 2021 (the “Adjunct Class
12 Period”); (b) 575 “Expense Reimbursement Class Members” who are persons other than adjunct
13 instructors employed by Defendant in California and who were required to work remotely at any time
14 during the period from March 18, 2020 through May 3, 2021 (the “ER Class Period”) (Adjunct Class
15 Members and ER Class Members are collectively referred to as “Class Members” or “CMs”).

16 4. I have no knowledge of the existence of any conflicting interests between my firm and
17 any of its attorneys, on the one hand, and Plaintiff or any Class Members, on the other.

18 5. I submit this declaration in support of Plaintiffs’ Motion for preliminary Approval of Cass
19 Action Settlement.

20 II. ATTORNEY EXPERIENCE

21 6. HammondLaw has been certified as Class Counsel or Co-Class Counsel over 55 wage and
22 hour class actions, representing tens of thousands of employees, including in the Superior Courts for the
23 Counties of Alameda, Los Angeles, Sacramento, San Diego, San Francisco, Solano, Santa Clara,
24 Monterey, San Joaquin, Placer, Orange, Contra Costa, San Bernardino, and in federal District Courts in
25 California in diversity jurisdiction cases based on state law, over the last ten years. In addition,
26 HammondLaw is putative Class Counsel in at least 30 pending actions in California Superior Courts, and
27 federal courts, some of which have been tentatively settled and/or preliminarily approved by the Courts,
28 and several of which, like the present case, are brought on behalf of part-time instructors or adjunct
professors. My firm’s resume is attached as **Exhibit 1**.

¹ I am also an active member of the Bar of the State of New York and of the Washington State Bar Association. I am also admitted to practice as a Barrister-at-Law in both the New South Wales and Victorian Supreme Courts, located in Australia.

1 7. I graduated from the University of South Wales with a Bachelor of Commerce in 1995,
2 from the University of Technology in Sydney with a Bachelor of Law *summa cum laude* in 1999, and
3 from New York University School of Law with a Masters of Law in 2001. I founded HammondLaw in
4 2010. Since the founding of HammondLaw, I have devoted a substantial percentage of my practice to
5 litigating cases involving wage and hour violations, the bulk of these being class actions. My firm has
6 represented tens of thousands of employees in wage and hour class actions under California law and in
7 California courts.

8 8. My two associates, Polina Brandler and Ari Cherniak, played an active role in this case.
9 Ms. Brandler is a twelfth-year associate. She received her B.A. in history *cum laude* from the Macaulay
10 Honors College at the City University of New York in 2005, and her J.D. from the Benjamin N. Cardozo
11 School of law in 2009. While in law school, Ms. Brandler was an intern for the Honorable Sandra L.
12 Townes of the Southern District of New York, and was a volunteer for Sanctuary for Families advocating
13 for abused partners and/or spouses seeking orders of protection and/or uncontested divorces. After
14 graduation, she clerked for the Honorable Anita H. Dymant of the Appellate Division of the Los Angeles
15 Superior Court from 2009 to 2012. During her time at HammondLaw, her practice has focused on wage
16 and hour and consumer class actions. Ms. Brandler is admitted to practice law in California and New
17 York.

18 9. Mr. Cherniak is an eleventh -year associate. He received his B.S. in Philosophy *cum laude*
19 from Towson University in 2007, and his J.D. from Tulane Law School in 2011. While in law school,
20 Mr. Cherniak earned a citation for his extensive pro bono work in the Felony Trial Unit of Baltimore City
21 Office of the Public Defender. Since 2012, Mr. Cherniak's practice has focused on wage and hour and
22 consumer class actions. Mr. Cherniak is admitted to practice law in California, Washington, and
23 Maryland.

24 10. My experience and my firm's experience in the prosecution and resolution of wage and
25 hour class actions, and particularly wage and hour class actions on behalf of adjunct instructors, was a
26 significant factor in this case proceeding to early mediation and favorable settlement.

27 **A. HammondLaw's Experience Representing Adjuncts**

28 11. This is one of a series of cases brought by HammondLaw, which has been representing
adjunct instructors in similar unpaid wage cases since 2016.

12. Since 2016, HammondLaw has represented adjunct instructors and secured court-
approved settlements in 20 wage and hour class actions against universities throughout California.
HammondLaw has also successfully negotiated class action settlements on behalf of adjunct instructors

1 in approximately three other cases in various stages of settlement approval, and recently litigated one
2 such case—*Gola v. University of San Francisco*, No. CGC-18-565018 (San Francisco Super. Cty. Ct.)—
3 all the way through trial. These cases challenged a long-standing, industry-wide practice of classifying
4 adjunct instructors as non-exempt and not paying them for all hours worked. The cases have led to an
5 overhaul of the classification and compensation practices in the industry.

6 13. Class Counsel’s broad collective experience in the prosecution and resolution of wage and
7 hour class action litigation specifically on behalf of California adjunct instructors enabled Counsel to
8 efficiently assess the value of the claims of Class Members and to obtain an efficient settlement.

9 III. OVERVIEW OF THE LITIGATION

10 A. Procedural History

11 14. On September 25, 2020, Plaintiff filed her PAGA Notice alleging that Adjunct CMs were
12 non-exempt employees because they did not meet the earn “a monthly salary equivalent to no less than
13 two (2) times the state minimum wage for full-time employment” required under the professional
14 exemption, Wage Order No. 4, § 1(A)(3)(a)-(d). Plaintiff also alleged that Adjuncts were piece-rate
15 workers because Brandman compensated them a set amount of money for per Course, which Plaintiff
16 contended is a form of piece-rate compensation. Therefore, Brandman was required – but failed – (i) to
17 issue accurate itemized wage statements in violation of Labor Code §§ 226(a) and 226.2(a)(2); (ii) to
18 pay hourly and separately for rest breaks and to authorize and permit paid off-duty rest breaks in violation
19 of Labor Code §§ 226.2, 226.7, and IWC Wage Order No. 4-2001. Plaintiff also alleged that Brandman
20 (iii) failed to reimburse Adjunct CMs for necessarily incurred business expenses, including cellphone,
21 internet, and home office expenses, they incurred in carrying out their job duties for Defendant, in
22 violation of Labor Code § 2802.

23 15. On November 16, 2020, Plaintiff sent an amended PAGA notice adding allegations for
24 the violation of Labor Code § 2802 on behalf of all Brandman employees for home office expenses
25 incurred as a result of Brandman requiring them to work from home during the Covid-19 pandemic.

26 16. On December 2, 2020, Plaintiff filed a PAGA-only action based on the allegations set out
27 in her initial PAGA notice, and on February 1, 2021, Plaintiff filed a First Amended Complaint (“FAC”)
28 adding allegations set out in her Amended PAGA notice.

17. Defendant filed its Answer on March 2, 2021 pleading a general denial and thirteen
affirmative defenses, including, *inter alia*: (a) that Plaintiff and Adjunct CMs qualify as exempt
employees under one or more overtime exemptions, including without limitation the exemptions for

1 administrative, executive, or professional employees; and (b) that any decisions concerning Plaintiff's
2 employment were made in good faith based upon the facts as Defendant understood them.

3 18. Shortly after the filing of the FAC, the parties agreed to engage in informal discovery and
4 attend mediation.

5 19. On November 19, 2021, Plaintiff filed the operative Second Amended Complaint
6 ("SAC") adding class causes of actions for the violations alleged in the FAC.

7 **B. Informal Discovery**

8 20. In preparation for the mediation, Brandman produced data and documents including (a)
9 Plaintiff's personnel file; (b) exemplar Teaching Contracts; (c) Brandman's Part-Time (Adjunct) Faculty
10 Compensation Policies in effect during the PAGA Period; (d) Adjunct Faculty Policy; (e) academic
11 calendars; (f) Covid-19 Related Temporary Remote Work Policy; (g) Meal and Rest Period Policy for
12 California Non-Exempt Employees; (h) payroll calendars; (i) pay data from December 2016 through
13 December 2019 including the amount of each paycheck and the course rate paid for each course; (j)
14 adjunct scheduling data from Fall 2016 through Fall 2020 including the semester and title of each course,
15 whether it was online or on campus, number of classes in each course and length of each class, and the
16 number of credits in each course; and (k) amounts paid to the Class pursuant to Brandman's expense
17 reimbursement policies.

18 21. Plaintiff also conducted her own investigation including gathering additional documents
19 from Brandman's website, researching Brandman's organizational structure, policies, practices, financial
20 statements, and other publicly available information about Brandman, and conducting an online survey
21 of Adjunct CMs. Plaintiffs' counsel was able to determine the following facts based upon reliable
22 information we obtained through our own investigation or from Defendant in advance of mediation.

23 **Defendant's Organization**

24 22. Brandman is a private, non-profit university headquartered in Irvine, California. It offers
25 associate's, bachelor's, master's, and doctoral degree programs in more than 90 fields of study across
26 five schools and has more than 13,000 students enrolled each year. Brandman operates on a trimester
27 system with the fall trimester running from approximately early September to late December, the spring
28 trimester running from approximately mid-January to early May, and the summer trimester running from
approximately early May to late August. Each trimester is split into two sessions (e.g., "Fall 2020/Session
I" and "Fall 2020/Session II").

Class Member Data

23. Plaintiff analyzed the spreadsheets and data that Defendant provided, and determined that Brandman employed 1,790 Adjunct CMs during the Adjunct Class Period (December 2, 2016 to August 22, 2021) including 1,230 Adjunct CMs during the PAGA Period (September 25, 2019 to August 22, 2021).

24. Adjunct CMs taught approximately 16,775 courses during the Adjunct Class Period. Each course was on average 8 weeks long. According to Plaintiff's analysis, 32 classes were 3.5 hours or longer; and 8 classes were 5 hours or longer.

25. From the informal discovery and investigation, Plaintiff ascertained that Defendant employed Adjuncts on a session-by-session basis pursuant to standardized Teaching Contracts and paid them pursuant to Brandman's "Part-Time (Adjunct) Faculty Compensation Policy." Adjuncts were paid on a flat per-course basis ("Course Rate") that was paid out in equal biweekly installments over the session. The Teaching Contracts provided that "the compensation for each course is contingent upon a minimum number of enrollments" and may increase or decrease depending on class size, with some classes being cancelled altogether if enrollment did not meet predetermined targets. Pursuant to Brandman's Part-Time (Adjunct) Faculty Compensation Policy, Course Rates were based on the number of credit hours (for Lecture or Instruction Courses) or the number of students (for Non-lecture courses). Based on the Course Rate structure, Plaintiff believed she would be able to establish that the Course Rate was not a salary because a "salary" is a "predetermined amount that is not subject to reduction based upon the quantity or quality of work" but rather more closely resembled a piece rate.

26. The Teaching Contracts provided that the "This Agreement will expire on the last day of the Current session"; that the adjunct "has no right, expectation or promise to teach at Brandman beyond the period specified in this Agreement"; "Regardless of how many prior agreements have been entered into between the parties, Brandman University is under no obligation to renew this Agreement or to contract with Faculty Member to teach in the future"; "The University is under no obligation to renew or reappoint Faculty Members"; and "No obligation to renew or reappoint Faculty Member may be implied from the conduct of the parties or oral statements of any kind."

27. Plaintiff also alleged that Adjuncts were expected to perform work outside the 8-week terms, i.e., prior to the start of the Teaching Contract and after the end of the Teaching Contract, including preparing syllabi, course shells, and other course materials, planning lectures, assignments, and assessments, and submitting grades. Yet, Adjuncts were only paid for the approximately eight weeks

1 during which they taught. Accordingly, Plaintiff alleged Adjuncts were not paid for all of their hours
2 worked.

3 28. From the wage statements provided by Brandman, Plaintiff confirmed that wage
4 statements issued during the Class Period did not list hours, hourly rates, or piece rate information.

5 29. Plaintiff also alleged that that during the Adjunct Class Period, Brandman did not fully
6 reimburse Adjunct CMs who taught blended or online courses for the cost of home internet and cellular
7 telephones, necessarily incurred as a result of teaching courses online. Although Brandman provided that
8 Adjunct CMs could submit requests for reimbursement, Plaintiff contended that Adjunct CMs were not
9 fully reimbursed for their home office expenses. On May 3, 2021, Brandman introduced its Part-Time
10 (Adjunct) Faculty Compensation Policy which reimbursed Adjunct CMs \$38 each pay period for online
11 courses and \$22.50 each pay period for blended courses.

12 30. Finally, Plaintiff alleged that beginning on or about March 18, 2020, ER Class Members
13 were required to work remotely. Brandman knew or should have known that Plaintiff and ER Class
14 Members would require internet, home or mobile phones, and office supplies to carry out their job duties.
15 Although Brandman instituted a “Covid-19 Related Temporary Remote Work Policy” in July 2020 which
16 provided for an allowance of \$5 or \$10 per pay period, and provided that Class Members who incurred
17 expenses in excess of these amounts to submit a request for reimbursement, Plaintiff contended that ER
18 Class Members were not fully reimbursed for their home office expenses.

19 **Brandman Overhauled its Pay Practices Prior to and After the Filing of Lawsuit**

20 31. Following the filing of Plaintiff’s PAGA Notice, on November 1, 2020,² Brandman
21 amended its Part-time (Adjunct) Faculty Compensation Policy and reclassified adjunct faculty as either
22 salaried exempt or hourly non-exempt employees. Brandman required those Adjuncts who were paid
23 hourly to fill out timesheets for all hours worked. Brandman also changed the Teaching Contracts to
24 provide specific contract beginning and end dates that cover a one-week period prior to the start of classes
25 and a one-week period after the end of classes. As stated above, starting May 3, 2021, Brandman
26 reimbursed Adjuncts \$38 each pay period for each online course and \$22.50 each pay period for each
27 blended course.

28 ///

² 1,691 of the 1,779 Adjuncts were reclassified on November 1, 2020; the remaining 88 Adjuncts were not reclassified until August 23, 2021.

32. In addition, as stated above, starting on July 27, 2020 Brandman instituted its Covid-19 Related Temporary Remote Work Policy which provided for Class Members to submit their expenses for reimbursement, and which also provided a flat \$5 or \$10 bi-weekly stipend.

Mediation

33. On August 2, 2021, the parties attended a full-day mediation with Tripper Ortman, a highly respected mediator. Prior to the mediation, the parties submitted detailed briefs, supported by the documents obtained in informal discovery. After a full day of mediation, the parties reached agreement on the basic terms of the settlement, and in due course entered into the formal settlement agreement that is now submitted to the Court for approval.

34. At mediation, Defendant vigorously contended that Plaintiff's class claims were barred by the class action waiver included in the arbitration clause it required each employee to agree to in their Teaching Contracts as part of their employment. During the Class Period, each Adjunct Teaching 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 that could otherwise be pursued in court will be resolved exclusively by binding arbitration...Arbitration under this Agreement shall be conducted on an individual basis only...Faculty Member and University each waive any right to bring a class, collective or representative action (i.e., a type of lawsuit in which one or several persons sue on behalf of a larger group of persons), and no other person shall be entitled to join or consolidate in arbitration any claim by or against other current or former University employees.

35. Defendant contended that the Court would find its arbitration clause, including the class action waiver, enforceable and that Plaintiff's Adjunct class claims would be barred. Notwithstanding the possibility that Plaintiff could, in principle, file mass arbitrations against Brandman, Plaintiff believed a significant discount was warranted in settlement.

IV. PLAINTIFF'S DAMAGES ANALYSIS

36. Plaintiff calculated Brandman's maximum liability (before applying any discounts based on merits defenses and the risk of non-certification) as follows:

Wage Statements Claims - Labor Code §§ 226(a), (e), 226.2, and 204

37. Plaintiff alleges that during the Adjunct Class Period, Adjunct CMs, as non-exempt piece rate employees, were entitled to receive accurate itemized wage statements for each pay period during which they worked, and to receive wage statements that listed their hours worked, hourly rate, and piece rate information, pursuant to Labor Code § 226(a) and 226.2(a). However, the wage statements that

1 Brandman issued to Class Members prior to their reclassification did not include any of this required
2 information.

3 38. Plaintiff alleged that Defendant's practice with respect to the information included (and
4 omitted) on the wage statements was not a result of an unintentional payroll error, or clerical mistake,
5 but rather a result of Defendant's regular compensation policies and its policy of misclassifying Adjuncts
6 as exempt. Indeed, Brandman could not have met the §226(a)(2) and (a)(9) requirements during the
7 because it didn't track course-related time worked by Adjuncts. As such, the violation of Labor Code §
8 226(a) was knowing and intentional. Plaintiff also alleged that Adjunct CMs suffered injury as a result,
9 because they could not determine from the wage statements alone the number of actual hours worked, or
10 an applicable hourly rate.

11 39. Plaintiff calculated Defendant's liability as follows: Defendant issued a total of 15,202
12 wage statements to the 1,230 Adjunct Class members employed during the relevant Class Period
13 (December 2, 2019 through August 22, 2021). Plaintiff multiplied 1,230 initial pay periods by the \$50
14 penalty and 13,972 subsequent wage statements by the \$100 penalty, set forth in Labor Code § 226(e),
15 for total statutory damages of **\$1,458,700**.

16 40. **Class Certification Discounts:** Plaintiff applied a 10% discount for the risk of losing at
17 the class certification because wage statement claims are particularly well-suited to class certification.
18 This reduces Brandman's realistic exposure to \$1,312,830.

19 41. **Merits Discounts:** Defendant contended that that Adjunct CMs were properly classified
20 as exempt employees. As such they were not be entitled to wage statements that include a breakdown of
21 their hours and applicable hourly rates in effect or piece-rate information. From previous experience in
22 litigating similar claims, Plaintiff believes that an argument that Adjuncts are exempt is based on the
23 premise that the minimum monthly salary required to be exempt in California can be prorated for part-
24 time employment. However, the clear guidance from the DLSE and a December 3, 1999 memorandum
25 from the Chief Legal Counsel for the Labor Commissioner expressly provide that this premise is
26 incorrect. Indeed, Plaintiff's Counsel recently litigated this very issue at a bench trial and won. (Final
27 Statement of Decision in *Gola v. University of San Francisco*, No. CGC-18-565018 (San Francisco
28 Super. Cty. Ct.)). (Final Statement of Decision in *Gola v. University of San Francisco*, No. CGC-18-
565018 (San Francisco Super. Cty. Ct.))

42. Defendant could further have argued that Adjunct CMs were paid a set amount to teach
each scheduled course and received the full amount of pay in each paycheck regardless of the quantity
or quality of the work performed. Thus, Defendant could have argued that Adjuncts' pay lacked

1 characteristics of a piece-rate system where employees typically produced multiple units or piece per day
2 and can increase their pay by working harder or more efficiently. Brandman further argued that it acted
3 in good faith, and thus did not “knowingly and intentionally” fail to provide compliant wage statements,
4 which is an argument that has been recognized by the federal district courts but not California state courts.

5 43. Defendant also could have contended that the maximum applicable statutory penalty was
6 the initial penalty of \$50 per wage statement because Plaintiff had not established that Defendant ever
7 received notice from the labor commissioner or a court, and so there are arguably no “subsequent”
8 violations.

9 44. Plaintiff applied a modest a 25% reduction for the risk of the Court finding that there was
10 no knowing and intentional violation or injury because Brandman had a good faith defense that Class
11 Members were exempt, and for the risk that only a \$50 penalty would apply. This reduced Brandman’s
12 exposure on this claim to **\$984,622**.

13 **Unpaid Wages – Labor Code §§ 1194 and 226.2**

14 45. Plaintiff alleged that during the Class Period, Brandman paid Adjunct CMs a fixed amount
15 per course, which was based on the number of units taught, class size, and which were contingent upon
16 a minimum enrollment and could be prorated if enrollment fell below certain numbers. Plaintiff therefore
17 contended that Adjunct CMs were not salaried (which is defined as a predetermined amount of money
18 that is not subject to reductions based on quality or quantity of work) but were rather paid on a piece rate
19 basis, with the piece being the course. As a result, Adjunct CMs were paid for the hours of course
20 instruction only and were not paid hourly and separately for non-teaching tasks, such as preparation and
21 distribution of course syllabi prior to the semester (and prior to the start of the Teaching Contract) and
22 submitting grades after the semester ended (and after the end of the Teaching Contract) in violation of
23 Labor Code §§ 226.2 and 1194. Plaintiff believed that he would be able to show that Adjunct CMs
24 performed these duties, and that they spent on average approximately 10 hours before and after each
25 semester (each Teaching Contract) on these duties, but that they were not paid for this time worked, in
26 violation of Labor Code §§ 226.2 or 1194.

27 46. Plaintiff analyzed course data provided by Defendant and calculated that Adjunct CMs
28 taught 16,775 courses during the Class Period. Plaintiff multiplied 16,775 courses by 10 hours per course
to arrive at 167,750 hours of pre-and-post Contract work. The average minimum wage during the Class
Period was \$10.76, and the total amount of unpaid wages is \$1,804,990. Interest at 10% per annum adds
\$451,247 for a total of **\$2,256,237**.

1 47. **Class Certification Discount:** Defendant contended that this claim was not certifiable
2 because there would be variability in the amount of time actually spent, if any, in preparing to teach the
3 course. In addition, Defendant contended that Adjunct CMs compensation was a salary that incorporated
4 all duties, including prior to the first day of the course. Plaintiff countered that the variability in the
5 amount of time spent prior to the first day of courses is a matter of damages, and therefore does not
6 impact certification. As to the salary argument, Plaintiff argued that what the salary covers or does not
7 cover is a matter of contract interpretation, that is uniquely suitable for class certification. In order to
8 answer this question, a court would have to determine whether the fact that the Contracts provide that
9 each appointment to teach begins and ends on specific dates and provides compensation for the
10 responsibilities under the Contracts means that the compensation set out in the Contracts covers only
11 work performed between the beginning and end dates. Plaintiff believed these arguments warranted a
12 25% discount for the risk for non-certification which reduced Defendant's liability to \$1,692,178.13

13 48. **Merits Discount:** As to the merits, Defendant also contended that a court would find, as
14 a matter of law, that the salary covered pre-and-post-contract work. Plaintiff believed that there was only
15 a slight chance of Defendant's argument being successful because, as discussed in previous paragraph,
16 Teaching Contracts provided specific beginning and end dates for each appointment and set
17 compensation for the responsibilities under each Contract. Thus, allowing for the possibility that the
18 salary and/or piece covers work performed before the beginning of the contract would amount to
19 averaging or borrowing compensation contractually due for some work hours to meet the minimum wage
20 requirement for other uncompensated hours, which is not allowed under California law. Defendant also
21 contended that Plaintiff's estimate of 10 hours of per-and-post Contract work was an exaggeration, and
22 that little or no work was required because many Adjunct CMs were experienced instructors who had
23 taught the same course multiple times. Plaintiff recognized some risk from this argument, and applied a
24 further 25% discount was warranted, which reduced Brandman's realistic exposure on the unpaid wage
25 claim to **\$1,269,133.59.**

26 **Rest Break Claims – Labor Code §§ 226.2, 226.7**

27 49. As stated above, Plaintiff alleges that Defendant paid Adjunct CM's a Course Rate which
28 was a form of a piece-rate. Based on Defendant's course schedules, Plaintiff calculated that Adjunct
CM's taught 32 class sessions that were 3.5 hours or longer, and that Defendant did not pay them hourly
and separately for these rest breaks, in violation of Labor Code § 226.2, entitling them to premium for
each unpaid rest break. Plaintiff calculated Defendant's maximum exposure on this claim, using the

hourly rate of \$22.50 paid to Adjunct CMs after they were re-classified as hourly employees in Fall 2020, to be \$720. Interest at 7% per annum adds \$126 for a total of \$846.

50. **Class Certification:** Defendant could have argued that even if Adjunct CMs were paid on a piece-rate, the piece-rate included time spent on rest breaks, and individualized issues would predominate because what non-teaching time was included in the piece-rate would depend on each Adjunct CMs understanding of what the piece covered. Plaintiff applied a nominal 10% discount for these arguments, as he believed they had little chance of success because California prohibits an employer from building rest break pay into piece-rate and compensation owed and/or what piece rate includes is a matter of contract and/or interpretation of what the piece rate formula actually covers, not individual understanding. This reduced Defendant's liability to \$761.

51. **Merits:** As to the merits, Defendant contended that Plaintiff and Adjunct CMs were properly classified as exempt employees and they were not entitled to rest breaks. As explained above, Plaintiff 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 period that was not subject to change within each pay period based on the number of hours taught. Thus, Plaintiff applied a further 25% discount which reduced Brandman's realistic exposure on the rest break claim was reduced to **\$571**.

Meal Break Claims - Labor Code § 512

52. Plaintiff alleged that Adjunct CMs were non-exempt employees and were therefore entitled to an off-duty, unpaid 30-minute meal break before the end of the fifth hour of each shift pursuant to Labor Code § 512. Plaintiff alleged that Defendant imposed uniform policies and/or practices that impeded Adjunct CMs' ability to take meal breaks, including the requirement and expectation that Adjunct CMs be available to students during any class breaks to answer students' questions.

53. Plaintiff calculated that during the Class Period, Adjunct CMs taught 8 class sessions that were 5 hours or longer. Assuming a 100% violation rate, Brandman is liable one hour of premium pay (\$22.50) for all 8 sessions, which amounts to \$180. Interest at 7% per annum adds \$31.50 for a total of **\$211.50**.

54. **Class Certification:** Defendant could have argued that this claim would not be certified based on the fact that only a minuscule number of Adjunct CMs taught five-hour classes; and individual inquiries would be necessary to determine whether Adjunct CMs were able to take meal breaks during those 8 classes. Plaintiff applied a 25% discount, which reduced Brandman's exposure to \$158.63.

55. **Merits:** Defendant could have argued that CMs were exempt and therefore not entitled to meal breaks. Even if CMs were not exempt, Defendant argued that these classes had breaks, and if CMs

1 failed to take compliant meal periods it was as a matter of choice. Plaintiff believed these arguments
2 warranted a further 25% discount, which reduced Brandman's exposure on the meal break claim to **\$119.**

3 **Waiting Time Penalties - Labor Code § 203**

4 56. Plaintiff alleges that Brandman employed Adjunct CMs pursuant to a new and separate
5 contract each semester. Plaintiff's theory of liability is that Adjunct CMs' Contracts were for a definitive
6 period of time, which ended on the last day of the session, and therefore Adjunct CMs were discharged
7 for purposes of Labor Code § 201 on that date. According to pay data provide by Brandman, Brandman
8 issued final paychecks on average 1.33 days after the end of the Contracts, thereby failing to comply with
9 the timely final payment obligation of § 201(a). As a result, Brandman owes Adjunct CMs waiting time
10 penalties pursuant to Labor Code § 203.

11 57. Plaintiff calculated Brandman's maximum liability on this claim as follows: Plaintiff
12 calculated Adjunct CMs' daily rate as \$54.32 by dividing the average course rate (\$2,173.97) by the
13 average number of workdays in each course (40). Adjuncts taught 13,420 courses during the relevant
14 time period (December 2, 2017 to August 22, 2021). Due to the last paycheck being issued on average
15 1.33 days after the last day of each session, there are a total of 17,848.6 days of waiting time penalties
16 that are potentially owed for all the Contracts/discharges. Thus, the penalty for all 13,420 discharges is
17 (\$54.32 daily rate * 17,848.6 days late) which equals **\$970,058.**

18 58. **Certification Discount:** Plaintiff applied a minimal 10% discount for the risk of non-
19 certification because their theory of liability is amenable to class treatment as the relevant legal and
20 factual issues can be determined by facts common to all Adjunct CMs. Additionally, whether the Contract
21 Teaching Agreements are contracts for a definitive period of time, and what the end date of the contract
22 is, are matters of construction of the Contracts, the answer to which will apply equally to all Adjunct
23 CMs. Whether Adjunct CMs were discharged at the end of a contract for a definitive period is a question
24 of law, and whether the late payment was willful is a question that can be determined through PMK
25 testimony. Applying this discount reduced the waiting time penalties to **\$873,052.22.**

26 59. **Merits Discount:** Plaintiff applied a 50% discount on the merits based on Defendant's
27 potential major defenses that (1) Brandman had a good faith dispute that there was not a discharge at the
28 end of each Contract because the majority of Adjunct CMs worked continuously from term to term and
maintained an employment relationship with Brandman, and (2) Brandman had a good faith dispute that
Class Members were properly classified as exempt and were not owed any unpaid wages. These defenses
could negate the willfulness requirement of Labor Code § 203. Brandman also argued that it cannot be
liable for penalties on every contract that it issued because many Adjuncts taught more than one course

1 (and were issued more than one contract) in the same semester. Applying this discount, for settlement
2 purposes, the realistic value of the penalties is reduced to **\$436,526.**

3 **Adjunct Unreimbursed Expenses Claim - Labor Code § 2802**

4 60. Plaintiff alleged that Brandman did not reimburse Adjunct CMs who taught online or
5 blended courses during the Adjunct Class Period, for their expenses incurred teaching courses from home.
6 Based on data provided, Adjunct CMs taught 13,226 such courses including 8,596 online courses and
7 4,630 blended courses. Plaintiff contends that under Labor Code § 2802, Adjunct CMs were entitled to
8 be compensated for business expenses, including the cost of home internet and cellular telephones,
9 necessarily incurred as a result of teaching courses online. Using the reimbursement amounts set out in
10 the Part-Time (Adjunct) Faculty Compensation Policy which reimbursed adjuncts \$38 each pay period
11 for every online course and \$22.50 each pay period for each blended course, Plaintiff calculated the
unreimbursed expenses of Adjunct CMs as \$326,645 for online courses (8,596 courses * \$38) and
\$104,170 for blended courses (4,630 courses * \$22.50), for a total of \$430,816.

12 61. During the Adjunct Class Period, Brandman reimbursed Adjuncts a total of \$374,040 in
13 allowances and reimbursement. After deducting these amounts, Defendant is liable for \$56,775 in
14 unreimbursed expenses. Interest at 10% per annum adds \$14,194 for a total of **\$70,969.34.**

15 62. **Adjunct Class Certification Risk:** Plaintiff applied a 25% discount for class certification
16 based on the fact that there were varying practices with regard to expenses incurred by Adjuncts and
17 whether those expenses were reasonable would lead to individualized issues. Applying this discount
reduced the recoverable unreimbursed expenses to \$53,227.

18 63. **Adjunct Class Merits Risk:** As to the merits, Plaintiff applied a further 25% discount
19 based on anticipated arguments that even if expenses were incurred, these were voluntary and/or minimal.
20 This reduced realistic damages to **\$39,920.**

21 **Adjunct CMs Maximum and Realistic Exposure**

22 64. Plaintiff calculated maximum damages (excluding PAGA penalties) for the Adjunct Class
as \$4,757,022 and realistic exposure as \$2,730,892 as follows:

23 ///

Labor Code Section	Maximum Damages	Realistic Exposure
Wage Statements (§§ 226(a), (e))	\$1,458,700.00	\$984,622.50
Unpaid Wages (§§ 226.2 / 1194)	\$2,256,237.50	\$1,269,133.59
Rest Breaks (§ 226.7)	\$846.00	\$571.05
Meal Breaks (§ 512)	\$211.50	\$118.97
Waiting Time Penalties (§ 203)	\$970,058.02	\$436,526.11
Unreimbursed Expenses (§ 2802)	\$70,969.34	\$39,920.25
Total	\$4,757,022	\$2,730,892.48

65. **ER Class Claims (Lab. Code § 2802):** Labor Code § 2802 requires an employer to “indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer....” Plaintiff alleged that, starting on or about March 18, 2020, as a result of COVID-19, Brandman started requiring and expecting all ER Class Members to work remotely from home. Brandman knew or should have known that its adjuncts and other employees would incur business expenses (i.e., home office expenses, including internet) in order to carry out their job duties from home. Plaintiff alleged that during the ER Class Period, Defendant did not adequately reimburse ER CMs for business expenses in violation of Labor Code § 2802.

66. Plaintiff calculated Defendant’s potential liability for unreimbursed business expenses as follows: the ER Class worked a total of 18,002 pay periods during the ER Class Period. Plaintiff estimates that ER Class Members incurred \$50 per month (or \$25 per pay period) in home office expenses, for a total of \$450,050. During the ER Class Period, Brandman reimbursed ER Class Members a total of \$123,412.83 in allowances and reimbursement. After deducting this amount, Defendant is liable for \$326,637 in unreimbursed expenses. Interest at 10% per annum adds \$39,196 for a total of **\$365,834** in unreimbursed expenses

67. **Class Certification:** Defendant contended that individualized issues would predominate including whether ER Class Members incurred expense working remotely, whether the expenses incurred by each ER Class Member were reasonable, whether Brandman was aware that ER Class Members incurred such expenses, and whether such expenses were reimbursed —the answers to all of those questions will vary on a case-by-case basis. Plaintiff applied a 25% discount for class certification based on this argument the which reduced Brandman’s liability to \$274,375.

1 68. **Merits:** Brandman contended that it provided reimbursement for home office expenses
2 upon request to all employees beginning in March 2020, and that beginning in July 2020, Brandman
3 began providing allowances for work-from-home expenses. Brandman therefore argued that even if
4 expenses were incurred, ER Class Members were free to seek reimbursement for expenses incurred for
5 remote work. Plaintiff applied a discount of 25% for this argument, which reduced Brandman's realistic
6 exposure on this claim is **\$205,781**.

7 **V. FAIRNESS, ADEQUACY, AND REASONABLENESS OF SETTLEMENT**

8 69. Based on my experience with similar class actions and my investigation, research, and
9 knowledge of the specific facts and legal issues in this case, I believe that the Settlement is fair, adequate,
10 reasonable, and appropriate. This conclusion is based on my knowledge of the strength and weaknesses
11 of the claims asserted by Plaintiff, Defendant's defenses including its arbitration agreement, and the
12 typical risks associated with class action litigation.

13 **Fairness of Settlement of Adjunct Claims**

14 70. As stated above, Plaintiff calculated Brandman's maximum exposure on the Adjunct
15 Class claims (including interest but excluding PAGA penalties) as \$4,757,022. After discounts, Plaintiff
16 estimated Defendant's *realistic* exposure as \$2,730,892. The \$1,426,000 of the Gross Settlement
17 allocated to Adjunct CM's claims (92% of the GSA) represents 30% of Defendant's maximum exposure
18 and 53% of its realistic exposure. This is, in my experience, a very good percentage when considering
19 the fact that Defendant entered into arbitration agreements with Adjunct CMs that would render
20 Plaintiff's class claims worthless if enforced.

21 71. Under the Settlement Agreement, if approved as submitted, \$865,566³ will be available
22 for distribution to Adjuncts on a *pro rata* basis based on the number of pay periods worked by them
23 during the Adjunct Class Period. The average net recovery per Adjunct CM is \$486.55⁴ and the average
24 gross recovery is \$801.57.⁵ There are approximately 50,714 pay periods in the Adjunct Class period and
25 value of each pay period is \$17.07 net⁶ and \$28.12 gross.⁷ An Adjunct CM who worked for the entire
26 Adjunct Class Period – approximately 30 weeks per year for nearly five years - can expect to receive

27 ³ The Net Settlement amount allocated to the Adjunct Class after deduction of fees (up to \$516,666.67)
28 and costs (\$25,000); service award to Plaintiff (\$7,500); settlement administration costs (up to \$25,000);
PAGA payment (\$35,000) and payments to ER Class Members (\$75,266).

⁴ \$865,566/ 1,779 Adjunct Class Members.

⁵ \$1,426,000/ 1,779 Adjunct Class Members

⁶ \$865,566/ 50,714 pay periods.

⁷ \$1,426,000/ 50,714 pay periods

(footnote continued)

1 approximately \$1,216.⁸ These are significant recoveries when considering the risk associated with
2 Defendant's arbitration defense. In my experience, this settlement is fair, adequate, and reasonable for
3 the Class.

4 72. The average recovery per Adjunct CM of \$801.57 gross and \$486.55 net compares
5 favorably with similar cases where plaintiffs faced risk based on an arbitration agreement with a class
6 action waiver including *Merlan et al. v. Alliant Int'l University*, Case No. 37-2019-00064053-CU-OE-
7 CTL (San Diego Superior Court, November 2, 2021) (finally approving wage and hour class action
8 settlement with an average recovery per adjunct of \$886 gross and \$511.62 net); *Harris-Foster v.*
9 *University of Phoenix, Inc.*, Case No. 19019028 (Alameda County Superior Court, March 17, 2021)
10 (finally approving wage and hour class action settlement with an average recovery per adjunct average
11 recovery of \$828 gross and \$516 net); and *Chindamo v. Chapman University*, Case No. 30-2020-
12 01147814-CU-OE-CXC (Orange County Superior Court, October 28, 2021) (preliminary approving
wage and hour class action settlement with an average recovery per adjunct of \$629.55 gross and \$362.54
net).

13 **Fairness of Settlement of Expense Reimbursement Class Member Claims**

14 73. As stated above, Plaintiff calculated Brandman's maximum exposure on ER Class claims
15 (including interest but excluding PAGA penalties) as \$326,637. After discounts, Plaintiff estimated
16 Defendant's *realistic* exposure as \$205,781. Under the Settlement Agreement, 8% of the GSA (a total of
17 \$124,000) will be allocated to the ER class, representing 34% of Defendant's maximum exposure and
18 60% of its realistic exposure. Approximately \$75,266⁹ will be available for distribution to ER Class
19 Members *pro rata* based on the number of pay periods worked by them during the ER Class Period. The
20 average net payment to ER Class Members is \$130.90¹⁰ and the average gross is \$215.65.¹¹ There are
21 approximately 18,002 pay periods in the Adjunct Class period and value of each pay period is \$4.18 net
22 ¹² and \$6.89 gross.¹³ An ER Class Member who worked for the entire ER Class Period – approximately
2 pay periods per month for 14.5 months - can expect to receive approximately \$121.25.¹⁴

23 ⁸ (15 pay periods per year * 4.75-year class period * \$17.07 net per pay period)

24 ⁹ The Net Settlement amount allocated to the ER Class after deduction of fees (up to \$516,666.67) and
25 costs (\$25,000); enhancement awards to Plaintiff (\$7,500); settlement administration costs (up to
\$25,000); PAGA payment (\$35,000) and payments to Adjunct Class Members (\$865,566).

26 ¹⁰ (\$75,266/ 575 ER Class Members)

27 ¹¹ (\$124,000 / 575 ER Class Members)

28 ¹² \$75,266/ 18,002 pay periods.

¹³ \$124,000/ 18,002 pay periods

¹⁴ (2 pay periods per month * 14.5 month class period * \$4.18 net per pay period)

74. This is, in my experience, a very good result when considering the fact that Defendant reimbursed over \$123,000 for expenses during the ER Class Period, and provided ER Class Members with a mechanism for submitting their necessarily incurred expenses.

PAGA Allocation is Fair and Reasonable

75. There were approximately 16,584 pay periods during the Adjunct PAGA Period. Using a penalty of \$100 per pay period (because Defendant never received notice from the Labor Commissioner or the Court so there are arguably no “subsequent” violations) Defendant’s maximum exposure in PAGA Penalties is \$1,658,400 (assuming the Court would not allow “stacking” of PAGA penalties for each separate Labor Code violations).

76. Plaintiff calculated the maximum PAGA Penalties recoverable by the ER Class as the same \$365,833 owed for unreimbursed expenses because it was highly unlikely that the Court would award PAGA penalties of more than 100% of the underlying damages especially where, as here, Defendant reimbursed over \$123,000 in business expenses, and changed its expense reimbursement policies to bring it into compliance with the labor code.

77. Plaintiff calculated Defendant’s total maximum exposure in PAGA penalties for Aggrieved Employees **\$2,024,233**.

78. The \$35,000 allocated to PAGA penalties represents 2% of Defendant’s PAGA exposure and is comparable to (or more than) PAGA allocations in similar cases that received final approval from California Superior Courts including *Solis et al. v Concordia University Irvine*, Case No. 30-2019-01114998-CU-OE-CXC (Orange County Superior Court)(February 3, 2022) (finally approving an \$890,000 wage and hour class action settlement including a PAGA allocation of \$29,000, representing 2% of the maximum \$972,700 in PAGA penalties); *Pillow et al. v Pepperdine University*, Case No. 19STCV33162 (Los Angeles Superior Court)(July 28, 2021)(finally approving a \$940,000 wage and hour class action settlement including a PAGA allocation of \$15,000, representing 1% of the maximum \$1,619,200 in PAGA penalties); *Moore et al v Notre Dame De Namur University*, Case No. 19-CIV-04765 (San Mateo County Superior Court) (July 1, 2021)(finally approving a \$882,880 wage and hour class action settlement including a PAGA allocation in the amount of \$12,000, representing 1.9% of the maximum \$631,300 in PAGA penalties); *Mooiman et al. v Saint Mary’s College of California*, Case No. C19-02092 (Contra Costa County Superior Court) (June 10, 2021)(finally approving an \$1,700,000 wage and hour class action settlement including a \$30,000 PAGA allocation representing 1% of the maximum \$649,200 in PAGA penalties, and explaining that “the record indicates that defendant changed many of the policies at issue before the action was brought, that there is a substantial monetary award which in

1 part serves the deterrent function of a penalty, and that defendant had some arguments of “good faith,”
2 that would mitigate penalties”); *Morse v Fresno Pacific University*, Case No. 19-CV-04350 (Merced
3 County Superior Court) (April 6, 2021) (finally approving an \$1,534,725 wage and hour class action
4 settlement including a \$30,000 PAGA allocation, representing 2% of maximum \$1,194,800 in PAGA
5 penalties); and *Harris-Foster v University of Phoenix*, , Case No. RG19019028 (Alameda Superior
6 Court)(March 17, 2021)(finally approving a \$2,863,106 wage and hour class action settlement including
a PAGA allocation of \$5,000, representing 1.5% of the maximum \$3,173,200 in PAGA penalties).

7 79. This allocation is fair and reasonable for several reasons. First, the overall settlement
8 resulted in significant relief for each Class which is what courts look at when assessing amount attributed
9 to PAGA penalties. In *Gola v. University of San Francisco*, No. CGC-18-565018 (San Francisco Cnty.
10 Super. Ct. March 3, 2021) a recent case brought by my firm on behalf of adjunct instructors, the court
11 found that substantial monetary relief in form of statutory penalties under § 226(e) (and fees and costs
12 plaintiff would seek) acted as a sufficient punishment and deterrent, and awarded only 15% of the full
13 PAGA penalties—and 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.

14 80. Second, Brandman contended that the Court would reduce any award of PAGA penalties
15 as “unjust, arbitrary and oppressive, or confiscatory” under Labor Code § 2699(e)(2) on the theory that
16 Brandman operated in good faith and reasonably believed it was in compliance with the Labor Code; in
17 light of the fact that it overhauled its policies and practices including reclassifying Adjunct CMs as
18 exempt salaried employees or as hourly non-exempt employees and reimbursing Class Members for their
19 business expenses. Defendant contended that the Settlement thus fulfils the purpose of PAGA which is
20 intended to remediate present violations and deter future ones, not to redress employees’ injuries.
Brandman also contended that the Court would reduce any award in light of Brandman’s status as a non-
21 profit institution.

22 81. Third, in order to recover any PAGA penalties, Plaintiff would be required at trial to prove
23 that each Aggrieved Employee suffered a violation for each pay period the employee worked, which
would be difficult in light of Defendant’s contentions discussed above.

24 82. Finally, although class certification requirements do not apply to PAGA claims, “such
25 claims can be stricken if they are found to be ‘unmanageable,’ and because only Class Members who
26 actually incurred unpaid wages or unreimbursed expenses during a particular pay period could recover
27 PAGA penalties for those violations, Defendant could have disputed that there is a manageable way to
28 determine who was entitled to such penalties.

1 **VI. THE SETTLEMENT AVOIDS RISKS AND EXPENSE OF FURTHER LITIGATION**

2 83. If parties continued to litigate this case, the trial court would rule on the enforceability of
3 the arbitration agreement and whether the class claims could proceed in arbitration. Then, assuming
4 Plaintiff won, the case would proceed to class certification as to the various claims. Whichever claims
5 cleared that hurdle would potentially face pre-trial dispositive motions, and whichever claims cleared
6 that hurdle would face trial. Regardless of the outcome at trial, the losing party would likely appeal, given
7 that some of the central legal issues in this case have not been conclusively addressed by an appellate
8 court. This process would take years to resolve. Plaintiffs' Counsel has been litigating a case on behalf
9 of University of San Francisco's adjunct instructors for nearly three years, which is still ongoing, and an
10 appeal is pending.

11 84. The settlement avoids these risks associated with the complexities of this litigation, and
12 especially in view of the arbitration clause in the Teaching Contracts at issue in this case. Instead, this
13 settlement provides an early resolution of a dispute, and all Class Members will obtain a recovery in the
14 relatively near future if the settlement is finally approved. Based on the foregoing, I consider this
15 settlement to be fair, reasonable and adequate, and an overall excellent result.

16 **VII. ATTORNEYS' FEES AND COSTS**

17 85. The Settlement Agreement provides that Defendant will not oppose a request for
18 attorney's fees of up to 33% of the Gross Settlement (i.e., \$516,666.67). This is fair, reasonable and
19 adequate to compensate Class Counsel for the substantial work they have already done to prosecute this
20 Action, the risk they assumed to agree to take the case in the first place, the great expense spared to the
21 Class by Class Counsel having achieved a successful resolution, and the continued time and expense that
22 Class Counsel will incur by administering the fair distribution of the settlement fund should this Court
23 grant the settlement's approval.

24 86. Class Counsel agreed to represent Plaintiff on behalf of the putative Classes on a
25 contingency basis, and further agreed to advance all litigation costs. Our significant financial outlays
26 would have been entirely lost if the case were not won, and the amount of Class Counsel's time that
27 would have remained uncompensated in that event would have been substantial. Class Counsel also took
28 on this case despite the known risks associated with Plaintiff's class allegations as described above and
the unpredictable risks that are common to most complex employment class actions that develop only
over the course of the litigation. Class Counsel was able to obtain a very favorable settlement for the
Classes.

1 87. Our firm has spent significant time litigating this case, including interviewing Plaintiff
2 and putative Class Members, reviewing documents provided by Plaintiff prior to and after case initiation
3 and information obtained by our firm through our own research, filing a detailed complaint, engaging in
4 extensive discovery, analyzing voluminous data produced by Brandman, conducting a survey, drafting a
5 detailed mediation brief, attending a full-day mediation, negotiating the settlement, drafting the
6 preliminary approval papers; and planning and strategizing throughout the case. Further, we will spend
7 many additional hours obtaining preliminary approval; overseeing the notice process; answering
8 questions from Class Members; preparing the final approval papers; attending the final approval hearing;
9 and overseeing the distribution of the settlement funds.

10 88. The Settlement Agreement's award of litigation costs of up to \$25,000 is intended for
11 commonly reimbursed out-of-pocket cost incurred by my firm, including filing and process-serving fees,
12 expenses related to court appearances, copying, legal and other research charges, and the professional
13 fees paid to Tripper Ortman for a full-day mediation session, which was essential in reaching the
14 Settlement.

15 89. If the Court grants Preliminary Approval and authorizes the dissemination of notice of the
16 settlement to the class, Class Counsel anticipates filing a Motion for Attorneys' Fees and Costs and
17 Enhancement Award for Class Representative that will be scheduled to be heard concurrently with the
18 Motion for Final Approval. If the Settlement is given preliminary approval by the Court, our firm will
19 need to expend additional hours and will incur additional costs preparing and filing the motion for final
20 approval and the motion for attorneys' fees and reimbursement of litigation costs, coordinating with the
21 settlement administrator, and answering calls and questions from Class Members.

22 **VIII. PLAINTIFF'S ENHANCEMENT AWARD**

23 90. The request for an Enhancement Award of \$7,500 to the Plaintiff is reasonable and fair.
24 The Enhancement Award is intended to compensate Plaintiff for the critical role she played in this case
25 and the substantial time, effort, and risks she undertook in helping secure the result obtained on behalf of
26 the Settlement Classes. In agreeing to serve as class representative, Plaintiff formally agreed to accept
27 the responsibility of representing the interests of all Class Members. Plaintiff collected and provided
28 documents and diligently assisted Class Counsel in the investigation for the case and in seeking informal
discovery. She assisted in preparing and evaluating the case for mediation, and provided Class Counsel
with guidance to evaluate and approve the proposed settlement on behalf of the Settlement Classes.
Plaintiff's participation and assistance was critical to the success of this litigation and the enforcement of
Labor Code protections. Without Plaintiff's willingness and commitment to come forward and serve as

1 Class Representative in commencing this lawsuit, this litigation, which enforces the protections of the
2 California Labor Code, would not have been brought. Significantly, the named Plaintiff is granting
3 Defendant a general release of all claims, which is far broader than the release being given by the
4 members of the Classes on whose behalf settlement has been reached. Finally, none of the Plaintiff's
5 claims are antagonistic to the interests of the class. Defendant does not oppose this request.

6 **IX. SETTLEMENT ADMINISTRATOR**

7 91. The parties have selected Simpluris, Inc. to administer this settlement. Simpluris has
8 extensive experience in the settlement administration of wage and hour class actions like this one, having
9 administered thousands of class action settlements, and my firm has retained them for the settlement
10 administration of many other wage and hour cases.

11 **X. CY PRES BENEFICIARY**

12 92. Subject to Court approval, pursuant to the Settlement and in accordance with California
13 Civil Code § 384(b), any uncashed settlement check amounts will be distributed to Community Legal
14 Aid SoCal, as the *cy pres* beneficiary. Community Legal Aid SoCal provides legal advice and
15 representation to individuals in Orange County and southern Los Angeles County including on
16 employment issues. I certify that I do not have any connection to or relationship with Community Legal
17 Aid SoCal that could reasonably create the appearance of impropriety as between the selection of the
18 recipient of the money or thing of value and the interests of the class, nor does my law firm.

19 I declare under penalty of perjury under the laws of the United States and the State of California that the
20 foregoing is true and correct. Executed on February 25, 2022.

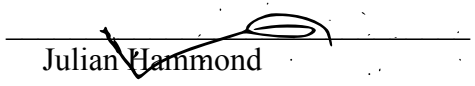
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Julian Hammond

EXHIBIT 1

Approved California Wage and Hour Cases

- ***Senese v. University of San Diego***, Case No. 37-2019-00047124-CU-OE-CTL (San Diego County Superior Court) (February 8, 2022) (certifying HammondLaw as co-class counsel for \$3,892,750 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of approximately 2,071 adjunct instructors);
- ***Solis et al. v Concordia University Irvine***, Case No. 30-2019-01114998-CU-OE-CXC (Orange County Superior Court) (February 3, 2022) (certifying HammondLaw as class counsel for \$890,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, 203, and 2802 claims on behalf of approximately 778 adjunct instructors);
- ***McCoy et v Legacy Education LLC***, Case No. 19STCV2792 (Los Angeles County Superior Court) (November 15, 2021) (Labor Code § 2698 et seq. representative action settlement for \$76,000 for violation of Labor Code §§ 1194, 226(a), 226.7, 512, 203, and 2802 on behalf of 31 instructors);
- ***Merlan v Alliant International University***, Case No. 37-2019-00064053-CU-OE-CTL (San Diego County Superior Court) (November 2, 2021) (certifying HammondLaw as co-class counsel for \$711,500 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of approximately 803 adjunct instructors);
- ***Stupar et al. v University of La Verne***, Case No. 19STCV33363 (Los Angeles County Superior Court) (October 14, 2021) (certifying HammondLaw as class counsel for \$2,450,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, 512, and 203 claims on behalf of approximately 1,364 adjunct instructors);
- ***Normand et al. v Loyola Marymount University***, Case No. 19STCV17953 (Los Angeles County Superior Court) (September 9, 2021) (certifying HammondLaw as class counsel for \$3,400,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of approximately 1,655 adjunct instructors);
- ***Veal v Point Loma Nazarene University***, Case No. 37-2019-00064165-CU-OE-CTL (San Diego County Superior Court) (August 27, 2021) (certifying HammondLaw as class counsel for \$711,500 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of approximately 670 adjunct instructors);
- ***Pillow et al. v Pepperdine University***, Case No. 19STCV33162 (Los Angeles County Superior Court) (July 28, 2021) (certifying HammondLaw as class counsel for \$940,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of approximately 1,547 adjunct instructors);
- ***Moore et al v Notre Dame De Namur University***, Case No. 19-CIV-04765 (San Mateo County Superior Court) (July 1, 2021) (certifying HammondLaw as class counsel for \$882,880 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of approximately 397 adjunct instructors);

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- ***Mooiman et al. v Saint Mary's College of California***, Case No. C19-02092 (Contra Costa County Superior Court) (June 10, 2021) (certifying HammondLaw as class counsel for \$1,700,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of approximately 760 adjunct instructors and Labor Code Code § 226(a) claim on behalf of 2,212 other employees);
- ***Peng v The President and Board of Trustees of Santa Clara College***, Case No. 19CV348190 (Santa Clara County Superior Court) (April 21, 2021) (certifying HammondLaw as class counsel for \$1,900,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of approximately 1,017 adjunct instructors and Labor Code Code § 226(a) claim on behalf of 5,102 other employees);
- ***Morse v Fresno Pacific University***, Case No. 19-CV-04350 (Merced County Superior Court) (April 6, 2021) (certifying HammondLaw as class counsel for \$1,534,725 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, 512 and 203 claims on behalf of approximately 861 adjunct instructors);
- ***Miner, et al. v. ITT Educational Services, Inc.***, Case No. 3:16-cv-04827-VC (N.D. Cal.) (March 19, 2021) (certifying HammondLaw as class counsel for \$5.2 million settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, 512 and 2802 claims on behalf of approximately 1,154 adjunct instructors);
- ***Harris-Foster v. University of Phoenix***, Case No. RG19019028 (Alameda County Superior Court, March 17, 2021) (certifying HammondLaw as class counsel for \$2,863,106 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7 and 2802 putative class action on behalf of approximately 3,447 adjunct instructors);
- ***Granberry v. Azusa Pacific University***, Case No. 19STCV28949 (Los Angeles County Superior Court, March 5, 2021) (certifying HammondLaw as class counsel for \$1,112,100 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7 and 2802 claims on behalf of approximately 1,962 adjunct instructors);
- ***Ott v. California Baptist University***, Case No. RIC1904830 (Riverside County Superior Court, January 26, 2021) (certifying HammondLaw as co-class counsel for \$700,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7 and 512 claims on behalf of approximately 958 adjunct instructors);
- ***Pereltsvaig v. Cartus Corporation***, Case No. 19CV348335 (Santa Clara County Superior Court, January 13, 2021) (certifying HammondLaw as class counsel in \$300,000 settlement of Labor Code §§ 226.8(a), 1194, 226(a), 226.7, 510, 512, and 2802 claims on behalf of 126 instructors);
- ***Morrison v. American National Red Cross***, Case No. 19-cv-02855-HSG (N.D. Cal., January 8, 2021) (certifying HammondLaw as class counsel in a \$377,000 Settlement of Labor Code §§ 1194, 226(a), 226.7, 510, 512 and 2802 claims on behalf of 377 instructors who taught training courses);
- ***Brown v. Cernx***, Case No. JCCP004971 (Cal. Sup. Ct. Alameda Cty. July 14, 2020) (certifying HammondLaw as co-class counsel in \$350,000 settlement of

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Labor Code §§ 1194, 226, 226.7, 510, 512, and 2802 claims on behalf of approximately 309 couriers);

- ***Stempien v. DeVry University***, Case No. RG19002623 (Cal. Sup. Ct. Alameda Cty. June 30, 2020) (certifying HammondLaw as class counsel for \$1,364,880 settlement Labor Code §§ 1194, 226, 226.2, 226.7, and 2802 claims on behalf of approximately 498 adjunct instructors);
- ***McCoy v. Concorde.***, Case No. 30-2017-00936359-CU-OE-CXC (Cal. Sup. Ct. Orange Cty. July 2, 2019) (certifying HammondLaw as class counsel for \$2,500,000 settlement of Labor Code §§ 1194, 226, 226.7, and 512 putative claims on behalf of approximately 636 adjunct instructors);
- ***Hogue v. YRC***, Case No. 5:16-cv-01338 (C.D. Cal. June 24, 2019) (certifying HammondLaw and A&T as co-class counsel for \$700,000 settlement of Labor Code §§ 1194, 226.2, 226.7, and 2802 claims on behalf of approximately 225 truck drivers);
- ***Sands v. Gold's Gym***, Case No. BC660124 (Cal. Sup. Ct. Los Angeles Cty. March 20, 2019) (Labor Code § 2698 *et seq.* representative action settlement for \$125,000 for violation of Labor Code § 1194, 2802 and 246 *et seq.* claims on behalf of 106 fitness instructors);
- ***Garcia v. CSU Fullerton.***, Case No. 30-2017-00912195-CU-OE-CXC (Cal. Sup. Ct. Orange Cty. February 15, 2019) (certifying HammondLaw as class counsel for \$330,000 settlement of Labor Code §§ 1194, 226, 226.7, and 512 claims on behalf of approximately 127 adjunct instructors);
- ***Pereltsvaig v. Stanford***, Case No. 17-CV-311521 (Cal. Sup. Ct. Santa Clara Cty. January 4, 2019) (certifying HammondLaw as class counsel for \$886,890 settlement of Labor Code §§ 1194, 226, 226.7, 512, 2802 and 2699 claims on behalf of approximately 398 adjunct instructors);
- ***Moss et al. v. USF Reddaway, Inc.***, Case No. 5:15-cv-01541 (C.D. Cal. July 25, 2018) (certifying HammondLaw and A&T as co-class counsel for \$2,950,000 settlement of Labor Code §§ 1194, 226, 226.7, and 201-203 claims on behalf of approximately 538 truck drivers);
- ***Beckman v. YMCA of Greater Long***, Case No. BC655840 (Cal. Sup. Ct. Los Angeles Cty. June 26, 2018) (Labor Code § 2698 *et seq.* representative action settlement for \$92,500 for violation of Labor Code § 1194 and 226(a) claims on behalf of approximately 101 fitness instructors);
- ***Maldonado v. Heavy Weight Transport, Inc.***, Case No. 2:16-cv-08838 (C.D. Cal. December 11, 2017) (certifying HammondLaw and A&T as co-class counsel for \$340,000 settlement of Labor Code §§ 1194, 226, 226.2, 226.7, 226, 201-203, and 2699 claims on behalf of approximately 160 truck drivers);
- ***Hillman v. Kaplan***, Case No. 34-2017-00208078 (Cal. Sup. Ct. Sacramento Cty. December 7, 2017) (certifying HammondLaw as class counsel for \$1,500,000 settlement of Labor Code §§ 1194, 226, 226.7, 201-203 and 2802 claims on behalf of approximately 500 instructors);

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- ***Bender et al. v. Mr. Copy, Inc.***, Case No. 30-2015-00824068-CU-OE-CXC (Cal. Sup. Ct. Orange Cty. October 13, 2017) (certifying HammondLaw and A&T as co-class counsel for \$695,000 settlement of Labor Code §2802 claims on behalf of approximately 250 outside sales representatives);
- ***Rios v. SoCal Office Technologies***, Case No. CIVDS1703071 (Cal. Sup. Ct. San Bernardino Cty. September 6, 2017) (certifying HammondLaw and A&T as co-class counsel for \$495,000 settlement of Labor Code §2802 claims on behalf of approximately 180 outside sales representatives);
- ***Russell v. Young's Commercial Transfer, Inc.***, Case No. PCU265656 (Cal. Sup. Ct. Tulare Cty. June 19, 2017) (certifying HammondLaw and A&T as co-class counsel for \$561,304 settlement of Labor Code §§ 1194, 226, 226.2, and 201-203 claims on behalf of approximately 962 truck drivers);
- ***Keyes v. Valley Farm Transport, Inc.***, Case No. FCS046361 (Cal. Sup. Ct. Solano Cty. May 23, 2017) (certifying HammondLaw and A&T as co-class counsel for \$497,000 settlement of Labor Code § 226, 1194, 512 and 2698 *et seq.* claims on behalf of approximately 316 truck drivers);
- ***Numi v. Interstate Distributor Co.***, Case No. RG15778541 (Cal. Sup. Ct. Alameda Cty. March 6, 2017) (certifying HammondLaw and A&T as co-class counsel for \$1,300,000 settlement of Labor Code §§ 1194, 226.2 and 2802 claims on behalf of approximately 1,000 truck drivers);
- ***Keyes v. Vitek, Inc.***, Case No. 2016-00189609 (Cal. Sup. Ct. Sacramento Cty. February 17, 2017) (\$102,000 settlement of PAGA representative action for violation of Labor Code § 226.8 on behalf of 90 truck drivers);
- ***Martinez v. Estes West dba G.I. Trucking, Inc.***, Case. BC587052 (Cal. Sup. Ct. L.A. Cty., April 4, 2017) (certifying HammondLaw and A&T as co-class counsel for \$425,000 settlement of Labor Code §§ 1194, 226, and 201-203 claims on behalf of approximately 156 truck drivers);
- ***Sansinena v. Gazelle Transport Inc.***, Case No. S1500-CV- No 283400 (Cal. Sup. Ct. Kern Cty. December 8, 2016) (certifying HammondLaw and A&T as co-class counsel for \$264,966 settlement of Labor Code §§ 1194, 226, and 201-203 claims on behalf of approximately 314 truck drivers);
- ***Cruz v. Blackbelt Enterprises, Inc.***, Case No. 39-2015-00327914-CU-OE-STK (Cal. Sup. Ct. San Joaquin Cty. September 22, 2016) (certifying HammondLaw and A&T as co-class counsel for \$250,000 settlement of Labor Code §§ 1194, 226, and 201-203 claims on behalf of approximately 79 truck drivers);
- ***Araiza et al. v. The Scotts Company, L.L.C.***, Case No. BC570350 (Cal. Sup. Ct. L.A. Cty. September 19, 2016) (certifying HammondLaw and A&T as co-class counsel for \$925,000 settlement of Labor Code §226, 510, 512 and 2802 claims on behalf of approximately 570 merchandisers; and Labor Code 226(a) claims on behalf of approximately 120 other employees);
- ***Dixon v. Hearst Television, Inc.***, Case No. 15CV000127 (Cal. Sup. Ct. Monterey Cty. September 15, 2016) (certifying HammondLaw as class counsel

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for a \$432,000 settlement of Labor Code § 2802 claims on behalf of approximately 55 outside sales representatives);

- ***Garcia et al. v. Zoom Imaging Solutions, Inc.*** SCV0035770 (Cal. Sup. Ct. Placer Cty. September 8, 2016) (certifying HammondLaw and A&T as co-class counsel for \$750,000 settlement of Labor Code § 510, 512, 1194 and 2802 claims on behalf of approximately 160 sales representatives and service technicians);
- ***O'Beirne et al. v. Copier Source, Inc. dba Image Source***, Case No. 30-2015-00801066-CU-OE-CXC (Cal. Sup. Ct. Orange Cty. September 8, 2016) (certifying HammondLaw and A&T as co-class counsel for \$393,300 settlement of Labor Code §2802 claims on behalf of approximately 132 outside sales representatives);
- ***Mead v. Pan-Pacific Petroleum Company, Inc.***, Case No. BC555887 (Cal. Sup. Ct. L.A. Cty. August 30, 2016) (certifying HammondLaw and A&T as co-class counsel for \$450,000 settlement of Labor Code §§ 1194, 226, and 201-203 claims on behalf of approximately 172 truck drivers);
- ***Lange v. Ricoh Americas Corporation***, Case No. RG136812710 (Cal. Sup. Ct. Alameda Cty. August 5, 2016) (certifying HammondLaw as co-class counsel for \$1,887,060 settlement of Labor Code § 2802 claims on behalf of approximately 550 sales representatives);
- ***Alcazar v. US Foods, Inc. dba US Foodservice***, Case No. BC567664 (Cal. Sup. Ct. L.A. Cty. March 18, 2016) (certifying HammondLaw and A&T as co-class counsel for a \$475,000 settlement on behalf of approximately 634 truck drivers);
- ***Harris v. Toyota Logistics***, Case No. C 15-00217 (Cal. Sup. Ct. Contra Costa Cty. February 9, 2016) (certifying HammondLaw and A&T as co-class counsel for \$550,000 settlement reached on behalf of approximately truck 125 drivers);
- ***Albanez v. Premium Retail Services Inc.***, Case No. RG1577982 (Cal. Sup. Ct. Alameda Cty. January 29, 2016) (Private Attorney General Act Settlement for \$275,000 on behalf of approximately 38 employees);
- ***Garcia et al v. Sysco Los Angeles, et al.***, Case No. BC560274 (Cal. Sup. Ct. L.A. Cty. November 12, 2015) (certifying HammondLaw and A&T as co-class counsel for a \$325,000 settlement on behalf of approximately 500 truck drivers);
- ***Cooper et al. v. Savage Services Corporation, Inc.***, Case No. BC578990 (Cal. Sup. Ct. L.A. Cty. October 19, 2015) (certifying HammondLaw and A&T as co-class counsel for \$295,000 settlement on behalf of approximately 115 truck drivers);
- ***Gallardo et al. v. Canon Solutions America, Inc.***, Case No. CIVDSS1500375 (Cal. Sup. Ct. San Bernardino Cty. August 5, 2015) (certifying HammondLaw and A&T as co-class counsel for \$750,000 settlement on behalf for approximately 320 outside sales representatives);

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- ***Glover v. 20/20 Companies, Inc.***, Case No. RG14748879 (Cal. Sup. Ct. Alameda Cty. August 3, 2015) (Private Attorney General Act Settlement for \$475,000 on behalf of approximately 273 independent contractors);
- ***Mayton et al v. Konica Minolta Business Solutions USA, Inc.***, Case No. RG12657116 (Cal. Sup. Ct. Alameda Cty. June 22, 2015) (certifying HammondLaw as co-class counsel for \$1,225,000 settlement on behalf for approximately 620 outside sales representatives);
- ***Garza, et al. v. Regal Wine Company, Inc. & Regal III, LLC***, Case No. RG12657199 (Cal. Sup. Ct. Alameda Cty. February 21, 2014) (certifying HammondLaw as class counsel for \$1.7 million settlement on behalf of approximately 317 employees);
- ***Moy, et al. v. Young's Market Co., Inc.***, Case No. 30-2011-00467109-CU-OE-CXC (Cal. Sup. Ct. Orange Cty. November 8, 2013) (certifying HammondLaw as co-class counsel for \$2.3 million settlement on behalf of approximately 575 sales representatives);
- ***Gagner v. Southern Wine & Spirits of America, Inc.***, Case No. 3:10-cv-10-04405 JSW (N.D. Cal. December 11, 2012) (certifying HammondLaw as co-class counsel for \$3.5 million settlement reached on behalf of approximately 870 sales representatives);
- ***Downs, et al. v. US Foods, Inc. dba US Foodservice***, Case No. 3:10-cv-02163 EMC (N.D. Cal. September 12, 2012) (certifying HammondLaw as co-class counsel for \$3 million settlement reached on behalf of approximately 950 truck drivers);

Approved California Consumer Cases

- ***Siciliano et al. v. Apple***, Case No. 1-13-cv-257676 (Cal. Sup. Ct. Santa Clara Cty. November 2, 2018) (approving \$16,500,000 settlement of Cal. Bus. Prof. Code §§ 17603, 17200, and 17535 claims on behalf of 3.9 million California subscribers to Apple InApp subscriptions);
- ***In re Ashley Madison Customer Data Security Breach Litigation***, Case No. 4:15-cv-02669 JAR (E.D. Mis. November 20, 2017) (HammondLaw appointed to the executive committee in \$11.2 million settlement on behalf of 39 million subscribers to ashleymadison.com whose information was compromised in the Ashley Madison data breach);
- ***Gargir v. SeaWorld Inc.***, Case No. 37-2015-00008175-CU-MC-CTL (Cal. Sup. Ct. San Diego Cty. October 21, 2016) (certifying HammondLaw and Berman DeValerio as co-class counsel in \$500,000 settlement of Cal. Bus. Prof. Code §§ 17603, 17200, and 17535 claims class action on behalf of 88,000 subscribers to SeaWorld's annual park passes);
- ***Davis v. Birchbox, Inc.***, Case No. 3:15-cv-00498-BEN-BGS (S.D. Cal. October 14, 2016) (certifying HammondLaw and Berman DeValerio as co-class counsel in \$1,572,000 settlement of Cal. Bus. Prof. Code §§ 17603, 17200, and 17535 claims on behalf of 149,000 subscribers to Birchbox's memberships);

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- ***Goldman v. LifeLock, Inc.*** Case No. 1-15-cv-276235 (Cal. Sup. Ct. Santa Clara Cty. February 5, 2016) (certifying HammondLaw and Berman DeValerio as co-class counsel in \$2,500,000 settlement of Cal. Bus. Prof. Code §§ 17603, 17200, and 17535 claims on behalf of 300,000 California subscribers to Lifelock's identity protection programs); and
- ***Kruger v. Kiwi Crate, Inc.*** Case No. 1-13-cv-254550 (Cal. Sup. Ct. Santa Clara Cty. July 2, 2015) (certifying HammondLaw as class counsel in \$108,000 settlement of Cal. Bus. Prof. Code §§ 17603, 17200, and 17535 claims on behalf of 5,400 California subscribers to Kiwi Crate's subscriptions).