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10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
11 **COUNTY OF ORANGE**
12

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

15 Plaintiff,

16 vs.

17 **BRANDMAN UNIVERSITY**, a California
18 Non-Profit Corporation,

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

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

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

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I. INTRODUCTION

Plaintiff Cheryl Burleigh seeks preliminary approval of a non-reversionary \$1,550,000 settlement of her wage and hour class claims and associated PAGA claims against Brandman University (“Defendant” or “Brandman”) individually and on behalf of two classes: (1) 1,779 “Adjunct Class Members” who were employed by Defendant in California as part-time adjunct instructors, were not paid in compliance with Labor Code Section 515.7, and were not paid on an hourly basis, at any time during the period from December 2, 2016 through August 22, 2021 (the “Adjunct Class Period”); and (2) 575 “Expense Reimbursement Class Members” who are persons other than adjunct instructors employed by Defendant in California and who were required to work remotely at any time during the period from March 18, 2020 through May 3, 2021 (the “ER Class Period”) (Adjunct Class Members and Expense Reimbursement Class Members are collectively referred to as “Class Members” or “CMs”).

The settlement will result in average payments to Adjunct CMs of \$486.55 net and \$801.57 gross. These are excellent results when considering that each Adjunct CM entered into an arbitration agreement with Defendant that included an express class action waiver that, if enforced, would render Plaintiff’s Adjunct class claims essentially worthless or difficult to certify. Moreover, Defendant overhauled all of the policies challenged in Plaintiff’s lawsuit to ensure compliance with the Labor Code, including reclassifying Adjuncts as either salaried exempt or hourly non-exempt employees; requiring those Adjuncts who were reclassified as hourly to fill out timesheets; changing Adjuncts’ contracts to cover time spent working before and after each course; and introducing a Part-Time (Adjunct) Faculty Compensation Policy which reimburses Adjunct CMs for remote work expenses.

The settlement will also result in average net payments to ER Class Members of \$130.90 and average gross payments of \$215.65, which is also an excellent result when considering that Defendant reimbursed ER Class Members over \$123,000 pursuant to its Covid-19 Related Temporary Remote Work Policy, and has provided ER Class Members with a mechanism for submitting their necessarily incurred expenses for reimbursement since June 2020.

The Settlement avoids all these risks associated with the typical litigation, as well as the very significant risk presented by Brandman’s arbitration agreement. As shown below, the terms of the Settlement 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.

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 1. Gross Settlement Amount (“GSA”) – Brandman will pay a non-reversionary sum of
2 \$1,550,000 to settle all claims alleged in the operative Second Amended Complaint. SA §§ 1.14. In
3 addition, Brandman will pay the employer-side payroll tax payments due and payable as a result of this
4 Settlement. SA §§ 1.14, 15.1.

5 2. Class Definitions and Class Periods – The “Adjunct Class” consists of part-time adjunct
6 instructors employed by Defendant in California who were not paid in compliance with Labor Code
7 Section 515.7 and were not paid on an hourly basis at any time between December 2, 2016 and August
8 22, 2021. The “Reimbursement Class” consists of all persons other than adjunct instructors who were
9 employed by Defendant in California and who were required to work remotely at any time between
10 March 18, 2020 and May 3, 2021. SA §§ 1.2-1.5, 1.7, 1.8.

11 3. Attorneys’ Fees, Costs, and Service Award – Class Counsel will seek attorneys’ fees of
12 up to \$516,666.67 (1/3 of the GSA), up to \$25,000 to reimburse out-of-pocket litigation costs, and
13 Enhancement Awards of up to \$7,500 for the Plaintiff. SA §§ 1.24, 6, 7.

14 4. PAGA Award – The Settlement allocates \$35,000 for the PAGA claims, to be divided
15 75/25 between the LWDA and the Settlement Class member who worked during the PAGA Period. SA
16 § 8.

17 5. Settlement Administrator and Administration Costs – The Parties have mutually agreed
18 to use Simpluris, Inc. as the Administrator. SA § 9. Simpluris is experienced in administering class action
19 settlements and has provided notification and/or claims administration services in thousands of cases.
20 Hammond Decl. ¶ 91. Settlement Administration Costs are capped at \$25,000. SA § 9.

21 6. Net Settlement Amount (“NSA”) – The NSA – the amount remaining of the GSA after
22 deductions of attorneys’ fees, costs, service award, settlement administration costs, and LWDA’s 75%
23 share of PAGA penalties – will total approximately \$940,833, if the Court approved the requested fees
24 and costs. The NSA will be allocated as follows: 92% of the NSA will be allocated to Adjunct CMs and
25 will be paid to Adjunct CMs pro rata based on number of pay periods worked as an Adjunct CM during
26 the Adjunct Class Period; and 8% of the NSA will be allocated to the ER Class and be paid to them pro
27 rata based on number of pay periods worked as an ER Class Member during the ER Class Period. SA §§
28 5.2, 5.3.

 7. Class Notice – Within 10 business days after the Court grants preliminary approval,
Brandman will provide Simpluris with a list of all CMs and the number of pay periods each worked
during the relevant Class Period and PAGA Period. SA § 10.1.1. Within 25 days after the Court grants

preliminary approval, 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, 10.1.4.

8. Opting Out or Objecting – CMs who wish to opt-out of the Settlement must send a written notice to Simpluris within 45 days of the mailing of the Notices. SA §§ 11.1, 1.23. 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. SA § 11.2. A CM may object to the Settlement by mailing an objection to Simpluris within 45 days of the mailing of the Notices. SA at §§ 12, 1.23.

9. Disputes – If any CM disagrees with the pay periods 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, each Adjunct CMs payment will be allocated 1/3 to wages and 2/3 to penalties and interest. Payments to the ER Class Members CMs will be allocated 100% to non-wage payments. SA § 5.4.1- 5.4.2.

11. Uncashed Checks –The Parties have designated Community Legal Aid SoCal as *cy pres* under Code of Civil Procedure § 384. SA § 14.2. In compliance with Code of Civil Procedure § 382.4, Class Counsel certifies that they have no connection to or relationship with Community Legal Aid SoCal that could reasonably create the appearance of impropriety as between the selection of the recipient of the money or thing of value and the interests of the class. See Hammond Decl. § 92.

12. Scope of Release and Final Judgment – CMs will release all claims alleged in the operative Complaint and arising during the Class Periods. SA §§ 16.1, 16.2. Named Plaintiff will also give a general release as consideration for her Service Award. *Id.* § 16.3.

III. OVERVIEW OF THE LITIGATION

A. Pleadings

Plaintiff filed her PAGA Notice on September 25, 2020 alleging that Adjunct CMs were non-exempt employees because they did not meet the earn “a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment” required under the professional exemption, Wage Order No. 4, § 1 (A)(3)(a)-(d). Plaintiff also alleged that Adjuncts were piece-rate workers because Brandman compensated them a set amount of money for per Course, which is a form of piece-rate compensation. Therefore, Brandman was required – but failed – (i) to issue accurate itemized wage statements in violation of Labor Code §§ 226(a) and 226.2(a)(2); (ii) to pay hourly and separately for rest breaks and to authorize and permit paid off-duty rest breaks in violation of Labor Code §§ 226.2, 226.7, and IWC Wage Order No. 4-2001. Plaintiff also alleged that Brandman (iii) failed to reimburse Adjunct

1 CMs for necessarily incurred business expenses in violation of Labor Code § 2802. On November 16,
2 2020, Plaintiff sent an amended PAGA notice alleging a violation of Labor Code § 2802 on behalf of all
3 Brandman employees for expenses incurred during the Covid-19 pandemic. Hammond Decl. ¶ 14. On
4 December 2, 2020, Plaintiff filed a PAGA-only action based on the allegations set out in her initial PAGA
5 notice; and on February 1, 2021, Plaintiff filed a First Amended Complaint (“FAC”) adding allegations
6 set out in her Amended PAGA notice. Hammond Decl. ¶ 16.

7 On March 2, 2021, Defendant filed an Answer pleading a General Denial and thirteen affirmative
8 defenses. Hammond Decl. ¶ 17. Shortly after the filing of the FAC, the parties agreed to engage in
9 informal discovery and attend mediation. Id. ¶ 18. On November 19, 2021 after reaching Settlement,
10 Plaintiff filed the operative Second Amended Complaint (“SAC”) adding class causes of actions for the
11 violations alleged in the FAC. Id. ¶ 19.

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

13 In aid of mediation, Brandman produced extensive informal discovery, including (a) Plaintiff’s
14 personnel file; (b) exemplar Teaching Contracts; (c) Brandman’s Part-Time (Adjunct) Faculty
15 Compensation Policies in effect during the PAGA Period; (d) Adjunct Faculty Policy; (e) academic
16 calendars; (f) Covid-19 Related Temporary Remote Work Policy; (g) Meal and Rest Period Policy for
17 California Non-Exempt Employees; (h) payroll calendars; (i) pay data from December 2016 through
18 December 2019 including the amount of each paycheck and the course rate paid for each course; (j)
19 adjunct scheduling data from Fall 2016 through Fall 2020 including the semester and title of each course,
20 whether it was online or on campus, length of each class, and the number of credits in each course; and
21 (k) amounts paid to the Class pursuant to Brandman’s expense reimbursement policies. Hammond Decl.
22 ¶ 20.

23 Plaintiff also conducted her own investigation including gathering additional documents from
24 Brandman’s website, researching Brandman’s organizational structure, policies, practices, financial
25 statements, and other publicly available information about Brandman, and conducting an online survey
26 of Adjunct CMs. Hammond Decl. ¶ 21.

27 From the informal discovery and investigation, Plaintiff ascertained that Defendant employed
28 Adjuncts on a session-by-session basis pursuant to standardized Teaching Contracts and paid them
pursuant to its “Part-Time (Adjunct) Faculty Compensation Policy” that provided a flat per-course
payment that could increase or decrease depending on class size. Hammond Decl. ¶ 25. Plaintiff therefore
believed she would be able to establish that the form of compensation 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.”

1 *Negri v. Koning & Associates*, 216 Cal. App. 4th 392, 399 (2013); rather it more closely resembled a
2 piece rate. Hammond Decl. ¶ 25. The Teaching Contracts also provided that the adjunct instructor “has
3 no right, expectation or promise to teach at Brandman beyond the period specified in this Agreement”
4 and Plaintiff therefore believed she would be able to establish that Adjunct CMs were discharged at the
end of each contract for purposes of Labor Code § 201. Id. ¶ 26.

5 Adjunct instructors were also expected to perform work outside of the Course, such as preparation
6 and distribution of course syllabi prior to the semester (and prior to the start of the Teaching Contract)
7 and submitting grades after the semester ended (and after the end of the Teaching Contract). Yet,
8 Adjuncts were only paid for time spent working during the Contract. Accordingly, Plaintiff alleged that
9 Adjuncts were not paid for all hours worked, separate and apart from the “piece” (i.e., the Course Rate),
in violation of Labor Code §§ 226.2 and 1194. Hammond Decl. ¶¶ 27, 45.

10 From the wage statements provided by Brandman, Plaintiff confirmed that wage statements
11 issued during the Class Period did not list any hours, hourly rates, or piece rate information. Hammond
12 Decl. ¶ 28.

13 Plaintiff also contended that Brandman did not reimburse Adjunct CMs for their expenses
14 incurred teaching online or blended courses during the Class Period. Hammond Decl. ¶ 29.

15 Finally, Plaintiff contended that during the ER Class Period, Brandman did not reimburse ER
16 Class Members fully for their expenses incurred working from home as a result of the Covid-19
pandemic. Hammond Decl. ¶ 30.

17 **C. Brandman Overhauled Its Pay Practices and Reimbursement Policies**

18 Following the filing of Plaintiff’s PAGA Notice, on November 1, 2020,¹ Brandman reclassified
19 adjuncts as either salaried exempt or hourly non-exempt employees. Brandman required those Adjuncts
20 who were paid hourly to fill out timesheets and paid them for all hours worked. Brandman also amended
21 its Teaching Contracts to provide contract beginning and end dates that cover a one-week period prior to
22 the start of classes and a one-week period after the end of classes. Hammond Decl. ¶ 31. On May 3, 2021,
23 Brandman amended its Part-Time (Adjunct) Faculty Compensation Policy which reimbursed Adjunct
CMs \$38 each pay period for online courses and \$22.50 each pay period for blended courses. Id. ¶ 29.

24 In addition, starting on July 27, 2020 Brandman instituted its Covid-19 Related Temporary
25 Remote Work Policy which provided an allowance of \$5 or \$10 per pay period, and provided that ER
26

27
28 ¹ 1,691 of the 1,779 Adjuncts were reclassified on November 1, 2020; the remaining 88 Adjuncts were
reclassified by August 23, 2021. Hammond Decl. ¶ 31, n.2

Class Members who incurred expenses in excess of these amounts to submit a request for reimbursement. *Id.* ¶ 32.

D. Mediation

On August 2, 2021, the parties attended a full-day mediation with Tripper Ortman, a highly respected mediator. Hammond Decl. ¶ 33. Prior to the mediation, the parties submitted detailed briefs, supported by the documents obtained in informal discovery. *Id.* At mediation, Plaintiff was confronted with a number of significant hurdles to reaching a class settlement including Brandman’s contention that 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.

Defendant vigorously 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, and worthless. Hammond Decl. ¶¶ 34-35; *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333. Brandman also argued that Plaintiff faced significant risks on class certification and the merits with respect to each claim for reasons other than the arbitration agreement, as detailed below. See *Id.* ¶¶ 36-68. 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. *Id.* ¶ 33.

IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS APPROPRIATE

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

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

1 **A. The Classes Are Ascertainable and Sufficiently Numerous**

2 Class Members are “ascertainable” where they may be readily identified without unreasonable
3 expense or time by reference to official records. *See Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955, 980
4 (2019); *Reyes v. Board of Supervisors*, 196 Cal. App. 3d 1263, 1271 (1987). These criteria are met here
5 as Defendant’s records are sufficient to permit identification of the Class Members. SA § 10.1.1.

6 The Classes are all sufficiently numerous since they have approximately 1,779 members and 575
7 members, respectively. *See Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981) [42 people “is
8 quantitatively sufficient for class action”]; *see also* 1 Newberg on Class Actions § 3.12 (5th ed. 2011)
9 (“[A] class of 40 or more members raises a presumption of impracticability of joinder.”).

10 **B. “Community of Interest” Exists Among Class Members**

11 A “community of interest” requirement embodies three factors: (1) predominant common
12 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
13 class representatives who can adequately represent the class. *Fireside Bank v. Superior Court*, 40 Cal.
14 4th 1069, 1089 (2007) (citations and internal quotations omitted). Each factor to establish a community
15 of interest exists among the Class Members.

16 **1. Common Questions of Law and Fact Predominate**

17 Where an employer’s policies or conduct are uniformly directed at a class of employees, like here,
18 the class-wide impact of the defendant’s policies satisfies the commonality requirement. *See Sav-On*
19 *Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 331 (2004) (upholding class certification, where the
20 common issue was whether the employer properly classified grocery store managers as exempt from
21 California’s overtime requirements). Here, Plaintiff challenges common pay policies raising predominant
22 common questions of law and fact including (1) whether Defendant misclassified Adjuncts as exempt;
23 (2) whether the “Course Rate” constituted a piece rate; (3) whether the compensation set out in the
24 Contracts covered work performed outside of the Contract; (4) whether Adjuncts were “discharged” for
25 purposes of Labor Code § 201; (5) whether Brandman had a good faith belief that no wages were due at
26 the time of discharge; (6) whether the wage statements Brandman issued to Adjuncts failed to comply
27 with Labor Code § 226(a) and 226.2(a); (7) whether the alleged violation of § 226(a) was knowing and
28 intentional; and whether Adjunct CMs suffered injury as a result; and (8) (as to Adjuncts and the ER
29 Class) whether Defendant failed to reimburse home office expenses in violation of Labor Code § 2802.

30 **2. Plaintiff’s Claims Are Typical of the Class Claims**

31 The “test of typicality” is whether other members have the same or similar injury, whether the
32 action is based on conduct which is not unique to the named plaintiffs, and whether other Class Members

1 have been injured by the same course of conduct.” *See Seastrom v. Neways, Inc.*, 149 Cal. App. 4th 1496,
2 1502 (2007); 1-3 California Class Actions Practice and Procedure (2007) § 3.02 Here, Plaintiff’s claims
3 are typical of the Classes that she seeks to represent because she was subject to the same compensation
4 policies/practices, suffered the same type of injury, and seeks the same types of relief.

5 **3. Plaintiff and Her Attorneys Will Adequately Represent the Class**

6 “Adequacy of representation depends on whether the plaintiff’s attorney is qualified to conduct
7 the proposed litigation and the plaintiff’s interests are not antagonistic to the interests of the class.” *Caro*
8 *v. Procter & Gamble Co.*, 18 Cal. App. 4th 644, 669, n.21 (1993) (citations omitted). Both elements are
9 satisfied here. Plaintiff’s Counsel are highly skilled and have extensive class action litigation experience.
10 Plaintiff’s Counsel have been appointed class counsel in numerous class action suits and have represented
11 thousands of adjunct instructors in similar unpaid wage cases since 2016, including numerous cases that
12 were certified for settlement purposes. Hammond Decl. ¶¶ 6, 11-13. Plaintiff is committed to representing
13 the interests of the Classes, does not have any conflicts with any CMs, and her interests are virtually
14 coextensive with those of the CMs. *Id.* ¶ 4.

15 **C. This Class Action Is a Superior Method of Adjudication**

16 Plaintiff’s and the class’ claims are based on Plaintiff’s contention that Defendant had uniform
17 policies and/or practices of paying Adjuncts by the piece, of failing to issue to Adjunct CMs accurate
18 wage statements showing hours worked, hourly rate, or piece-rate information; failing to issue wage
19 statements to Adjunct Class Members for all periods during which work was performed; failing to pay
20 hourly and separately for rest breaks and to authorize and permit paid off-duty rest breaks; failing to
21 provide off-duty meal breaks; and failing to reimburse Class Members for necessarily incurred business
22 expenses. All these claims involve common evidence including uniform contracts Brandman issued to
23 Adjuncts, academic calendars, handbooks, compensation policies, payroll calendars, and wage
24 statements; remote work policies; and expense reimbursement policies; it would be entirely impractical
25 and ineffective to litigate these claims on an individual basis. *See Bufil v. Dollar Fin. Grp., Inc.*, 162 Cal.
26 App. 4th 1193, 1208 (2008). The class action mechanism in this case will also allow Plaintiff and CMs
27 to obtain redress for their relatively small claims, which would otherwise be impractical to litigate on an
28 individual basis.

29 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

30 **A. The Two Step Settlement Approval Process**

31 Court approval of a class action settlement is a two-step process: (1) a preliminary review and
32 contingent approval by the trial court, and (2) after notice has been distributed to the Class Members, a

1 hearing and a detailed review that includes their responses. Manual for Complex Litigation (Fourth)
2 § 21.6 (“Manual”); Cal. Rules of Court, Rule 3.769(a); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794,
3 1800-1801 (1996). Thus, preliminary approval of the settlement is simply a conditional finding that the
4 settlement appears to be within the range of acceptable settlements. *See, e.g.*, 4 Newberg on Class Actions
5 § 11.25 (4th ed. 2002); Manual § 21.6. *C.f. North Cnty. Contractor’s Ass’n v. Touchstone Ins. Services*,
6 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.

7 **B. The Settlement is Fair and Reasonable**

8 In analyzing whether a settlement is fair and reasonable, courts consider a number of factors
9 including “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further
10 litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the
11 extent of discovery completed and the stage of the proceedings, the experience and views of counsel, and
12 . . . the reaction of the class members to the proposed settlement.” *Kullar v. Foot Locker Retail, Inc.*, 168
13 Cal. App. 4th 116, 128 (2008) (quoting *Dunk*, 48 Cal. App. 4th at 1801). A settlement is initially
14 “presumed to be fair” when (1) it “is reached through arm’s length bargaining; (2) investigation and
15 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in
16 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).

17 As discussed below, and as set out in the Hammond Declaration, the proposed Settlement is
18 presumptively fair because (1) it was the product of serious, informed, and non-collusive negotiations,
19 (2) the putative Class is represented by experienced counsel; and (3) the Parties investigated the claims,
20 exchanged key information, and thus Plaintiff’s Counsel was able to make an informed recommendation
21 about the proposed Settlement. In addition, the reasonableness of the Settlement is further supported by
22 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.

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

24 California courts recognize that “a presumption of fairness exists where ... [a] settlement is
25 reached through arms-length bargaining.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224,
26 245 (2001) (citation omitted). Here, the settlement is a result of extensive settlement negotiations between
27 the parties conducted at arm’s length and informed by substantial factual and legal investigation.
28 Throughout this case, the Classes have been represented by counsel with extensive experience in wage

1 and hour litigation, and, in particular, class actions alleging similar types of claims. Hammond Decl. ¶¶
2 10-13. Class Counsel have spent a considerable amount of time prosecuting this case, including, but not
3 limited to, drafting pleadings, meeting and conferring with Defendant's counsel, researching California
4 law, analyzing documents and data produced by Defendant, conducting surveys, preparing for and
5 attending a full-day mediation, and negotiating and finalizing the settlement agreement and related
6 documents. *See* Hammond Decl. ¶¶ 14-30. As discussed above, the mediation session was with a skilled,
experienced mediator Tripper Ortman. *Id.* ¶ 33.

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

8 The amount of the settlement in light of the strength of the plaintiff's case is the most important
9 "reasonableness" factor. *See Kullar*, 168 Cal. App. 4th at 130. The proposed settlement of \$1,550,000
10 easily passes the *Kullar* test as it will provide Adjuncts with an average recovery per Adjunct of \$486.55
11 net and the \$801.57 gross. Hammond Decl. ¶ 71. The \$1,426,000 of the GSA allocated to the Adjunct
12 claims provides 53% of the realistic recovery that Adjuncts could realistically recover through further
13 litigation. Hammond Decl. at ¶ 70. This percentage does not include a substantial discount that can be
14 applied to Adjunct claims in light of Defendant's arbitration agreements with class action waivers, which
would arguably lead to no recovery for the class at all. *Id.*

15 The \$124,00 of the GSA allocated to the ER Class provides 60% of the recovery that ER Class
16 Members could realistically achieved through further litigation. ER Class Members will receive an
17 average payment of \$130.90 net and \$215.65 gross, in addition to their share of PAGA Penalties. *Id.* ¶
73.

18 In addition to the major risks posed to her Adjunct class claims by the arbitration clause, Plaintiff
19 also faced the following actual and potential arguments to the merits of each of her claims.

20 **a. Wage Statement Claim (Lab. Code § 226(a) and 226.2(a)):** Plaintiff alleges that during
21 the Adjunct Class Period, Adjunct CMs, as non-exempt piece rate employees, were entitled to receive
22 accurate itemized wage statements for each pay period during which they worked, and to receive wage
23 statements that listed their hours worked, hourly rate, and piece rate information, pursuant to Labor Code
24 §§ 226(a) and 226.2(a). However, Plaintiff alleges that Brandman failed to provide Adjunct CMs with
25 statements that included their hours worked and applicable hourly rate; and that these failures were the
26 result of Defendant's regular compensation policies and thus knowing and intentional. Plaintiff alleged
27 that Adjunct CMs suffered injury because they could not determine from the wage statements alone the
28 number of actual hours worked, or an applicable hourly rate. Plaintiff calculated Defendant's maximum
liability under Labor Code § 226(e) as **\$1,458,700**. Hammond Decl. ¶¶ 37-39.

1 **Class Certification Risk:** Plaintiff applied only a nominal discount of 10% for the certification
2 risk because wage statement claims are particularly well-suited to class certification. See *Lubin v. The*
3 *Wackenhut Corp.*, 5 Cal. App. 5th 926 (2016); see also *Torres v. Air to Ground Services, Inc.*, 300 F.R.D.
4 386, 403 (C.D. Cal. 2014). Hammond Decl. ¶ 40.

5 **Merits Risk:** Plaintiff applied a 25% reduction for the risk of losing on the merits based on
6 Defendant's contentions that there was no knowing and intentional violation or injury because Brandman
7 had a good faith defense² that Class Members were exempt employees.³ Hammond Decl. ¶¶ 41-42, 44.
8 *Id.* Defendant also could have contended that the maximum applicable statutory penalty was the initial
9 penalty of \$50 per wage statement because Plaintiff had not established that Defendant ever received
10 notice from the labor commissioner or a court, and so there are arguably no "subsequent" violations.
11 *Robison v. Open Top Sightseeing San Francisco, LLC*, 2018 U.S. Dist. LEXIS 24556, at **52-58 (N.D.
12 Cal. Feb 14, 2018); *Bernstein v. Virgin Am., Inc.*, 2021 U.S. App. LEXIS 6641, *35-36 (9th Cir. Mar.
13 8, 2021) (holding that "subsequent" violations for purposes of PAGA do not occur until employer has
14 been notified that it is violating a Labor Code provision). Hammond Decl. ¶ 43. After applying discounts,
15 Brandman's realistic exposure was \$984,622. Hammond Decl. ¶ 44.

16 **b. Unpaid Wages Claim (Labor Code §§ 1194, 226.2):** Plaintiff alleges that Adjunct CMs
17 were paid on a piece-rate basis, with the piece being the course, and that as result CMs were paid for the
18 hours of work performed during the course, and were not paid hourly and separately for non-teaching
19 tasks, such as preparation and distribution of course syllabi prior to the semester (and prior to the start of
20 the Teaching Contract) and submitting grades after the semester ended (and after the end of the Teaching
21 Contract) in violation of Labor Code § 226.2 and 1194. Hammond Decl. ¶ 45. Plaintiff calculated
22 Brandman's maximum exposure as **\$2,256,237** (including interest). *Id.* ¶ 46.

23 **Class Certification and Merits Risks:** Plaintiff applied a 25% discount for the risk for non-

24 ² Although this argument has been recognized by the federal district courts, it has been rejected by
25 California state courts. *Kao v. Holiday*, 12 Cal. App. 5th 947, 962 (2017) (finding employer's failure to
26 include hours worked on wage statement as a result of misclassifying employee as exempt, was knowing
27 and intentional because the employer knew the fact that the information was not provided); and *Furry v.*
28 *East Bay Publishing, LLC*, 30 Cal. App. 5th 1072, 1085 (2018).

³ Having litigated similar claims, Plaintiff's Counsel believes this argument is based on the premise that
the minimum salary required to be exempt in California can be prorated for part-time employment.
However, the clear guidance from the DLSE and a December 3, 1999 memorandum from the Chief Legal
Counsel for the Labor Commissioner expressly provide that this premise is incorrect. Hammond Decl. ¶
41. Indeed, Plaintiff's Counsel recently litigated this very issue at a bench trial and won. (Final Statement
of Decision in *Gola v. University of San Francisco*, No. CGC-18-565018 (San Francisco Super. Cty.
Ct.)) *Id.*

1 certification on the theory that Adjunct CMs were paid a salary that incorporated all duties, including
2 prior to the first day of the course; or on the theory that the flat per course rate included all the activities
3 performed prior to the Course; or that amount of time each Adjunct CM spent on pre-Contract work
4 would lead to individualized issues, and because of potentially individualized issues of whether the tasks
5 performed pre-Contract were under Brandman's control. Hammond Decl. ¶ 47. As to the merits, Plaintiff
6 applied a further 25% discount for the risk that CMs' per-course compensation, whether a piece-rate or a
7 salary, included the hours worked before the start of the Contracts because those hours were spent on
8 tasks directly related to the course teaching assignment set out in the Contracts, and for a small risk that
9 a court would find CMs are exempt. *Id.* ¶ 48. Defendant also contended that Plaintiff's estimated number
10 of hours of per-and-post Contract work was exaggerated and that little or no work was required because
11 many Adjunct CMs who taught the same course multiple times Applying the certification and merits
discount, for settlement purposes, Brandman's realistic exposure on the unpaid wage claim is reduced to
\$1,269,133.59. *Id.*

12 **c. Rest Break Claim (Labor Code §§ 226.2 and 226.7):** Plaintiff alleges that during the
13 Class Period, Defendant compensated Adjunct CMs on a piece-rate basis, and was required, but failed,
14 to pay Adjunct CMs hourly and separately from the piece for the time spent on rest breaks pursuant to
15 Labor Code § 226.2(a)(1). Thus, Adjunct CMs who worked 3.5 hours or more were entitled to hourly
16 and separate pay for rest breaks. Defendant did not pay hourly and separately for these rest breaks, in
17 violation of Labor Code § 226.2, and Adjunct CMs were entitled to premium pay (at one hour of their
18 average pay) for each unpaid rest break. *See Amaro v. Gerawan Farming, Inc.*, No. 1:14-cv-00147-DAD-
19 SAB, 2016 U.S. Dist. LEXIS 112540. Plaintiff calculated Brandman's exposure on this claim as **\$846**
(including interest). Hammond Decl. ¶ 49.

20 **Class Certification Risk:** Defendant could have argued that even if Adjunct CMs were paid on
21 a piece-rate, the piece-rate included time spent on rest breaks, and individualized issues would
22 predominate because what non-teaching time was included in the piece-rate would depend on each
23 Adjunct CMs understanding of what the piece covered. Hammond Decl. ¶ 50. Plaintiff applied a nominal
24 10% discount for these argument, as he believed they had little chance of success because California
25 prohibits an employer from building rest break pay into piece-rate (*Bluford v. Safeway Inc.*, 216 Cal. App.
26 4th 864, 871-72 (2013)) and compensation owed and/or what piece prate includes is a matter of contract
27 and/or interpretation of what the piece rate formula actually covers, not individual understanding
28 (*Cardenas v. McLane Foodservices, Inc.*, 796 F. Supp. 2d 1246, 1252-53 (C.D. Cal. Jun. 23, 2011).
Hammond Decl. ¶ 50. This reduced Brandman's realistic exposure on the rest break claim was reduced

1 to \$761. Hammond Decl. ¶ 50.

2 **Merits Risk:** As to the merits, Defendant contended that Plaintiff and Adjunct CMs were exempt
3 employees; as such they were not entitled to rest breaks. As explained above, Plaintiff considered that
4 there was little chance of Defendant succeeding on the argument that Adjunct CMs were believed exempt,
5 but recognized some risk on the argument it was a salary because it appeared that Adjunct CMs did
6 receive a predetermined amount each pay period that was not subject to change within each pay period
7 based on the number of hours taught. Thus, Plaintiff applied a further 25% discount which reduced
8 Brandman's realistic exposure on the rest break claim was reduced to **\$571**. Hammond Decl. ¶ 51.

9 **d. Meal Break Claim (Labor Code § 512):** As discussed above, Plaintiff alleged that CMs
10 were non-exempt employees and were therefore entitled to an off-duty, unpaid 30-minute meal break
11 before the end of the fifth hour of each shift pursuant to Labor Code § 512. Plaintiff alleged that Defendant
12 imposed uniform policies and/or practices that impeded CMs' ability to take meal breaks, including the
13 requirement and expectation that CMs be available to students immediately before and after class and
14 during breaks in class to answer students' questions. Plaintiff calculated Defendant's liability on the meal
15 break claim as \$211.50 (including interest). Hammond Decl. ¶ 53.

16 **Class Certification:** Defendant could have argued that this claim would not be certified based on
17 the fact that there were only 8 instances of Adjunct CMs teaching a five-hour classes, and individual
18 inquiries would be necessary to determine whether Adjunct CMs were able to take meal breaks during
19 those classes. Plaintiff applied a 25% discount for this argument reduced Brandman's realistic exposure
20 on the rest break claim was reduced to \$158.63. Hammond Decl. ¶ 54.

21 **Merits:** Defendant could have argued that Adjunct CMs were exempt and therefore not entitled
22 to meal breaks. Even if Adjunct CMs were not exempt, Defendant argued that longer classes had breaks,
23 and CMs were permitted to take compliant meal periods, and if they failed to do so it was as a matter of
24 choice. Defendant therefore argued that Plaintiff's assumed violation rate of 100% was highly unrealistic.
25 Plaintiff believed these arguments warranted a further 25% discount, which reduced Brandman's
26 exposure on the meal break claim to **\$119**. Hammond Decl. ¶ 55.

27 **e. Waiting Time Penalties (Labor Code § 203):** Plaintiff alleges that Adjunct CMs were
28 discharged on the last day of each term, upon completion of their Contract. Hammond Decl. ¶ 56.
However, because Brandman followed its regular payroll practices when paying Adjunct CMs, resulting
in the final paycheck date falling on average 1.33 days after the Contract end date, which entitles Adjunct
CMs to waiting time penalties under Labor Code § 203. Plaintiff calculated that waiting time penalties
are **\$970,058**. *Id.* ¶ 57.

1 **Class Certification:** Plaintiff applied a minimal 10% discount for the risk on class certification
2 because his theory of liability rests on common legal and factual questions of what constitutes a discharge
3 within the meaning of § 201, whether Contracts are agreements for a definitive period of time, what is
4 the end date of the Contract, and whether late payment was willful. *See Rodman v. Safeway, Inc.*, No.
5 11-cv-03003-JST, 2014 U.S. Dist. LEXIS 314438, at *25 (N.D. Cal. Mar. 9, 2014) (holding that “‘claims
6 arising from interpretations of a form contract appear to present the classic case for treatment as a class
7 action’”) (citing cases). This reduced Brandman’s realistic exposure to \$873,052. Hammond Decl. ¶ 58.

8 **Merits:** Plaintiff applied a further 50% discount on the merits because Plaintiff faced the
9 following arguments: (1) there was no “discharge” at the end of each contract under *Elliot v. Spherion*
10 *Pac. Work, LLC*, 572 F.Supp. 2d 1169, 1176-77 (C.D. Cal. 2008), because the employment of the majority
11 of Adjunct CMs’ worked continuously from term to term and maintained an employment relationship
12 with Brandman; and (2) Brandman had a good faith dispute that Class Members were properly classified
13 as exempt, or as salaried non-exempt, and were not owed any wages for non-teaching time or rest breaks.
14 These defenses could negate the willfulness requirement of Labor Code § 203. *See Barnhill v. Roberts*
15 *Saunders & Co.*, 125 Cal. App. 3d 1, 8-9 (1981) (an employer’s failure to pay wages is not “willful,” if
16 the legal duty to pay them was unclear at the time of the violation.); *see also* Cal. Code Regs., tit. 8, §
17 13520. Brandman also argued that it cannot be liable for penalties on every contract that it issued because
18 many Adjuncts taught more than one course (and were issued more than one contract) in the same
19 semester. Hammond Decl. ¶ 59. After applying discounts, for settlement purposes, Plaintiff determined
20 that Brandman’s exposure is **\$436,526**. *Id.*

21 **f. Adjunct Unreimbursed Expenses Claim (Labor Code § 2802):** Plaintiff alleged that
22 throughout the Class Period, Brandman did not reimburse Adjunct CMs who taught online or blended
23 courses for their necessarily incurred home office expenses until it amended its Part-Time (Adjunct)
24 Faculty Compensation Policy. Plaintiff calculated the unreimbursed expenses of Adjunct CMs as
25 \$70,969.34 (including interest). Hammond Decl. ¶ 61.

26 **Class Certification / Merits Risks:** Plaintiff acknowledges that there were varying practices with
27 regard to incurring expenses that pose an obstacle to class certification. Therefore, Plaintiff applied a
28 25% reduction for class certification; and a further 25% discount based on anticipated arguments that
even if expenses were incurred, they were voluntary and/or minimal. Hammond Decl. ¶¶ 62-63. After
applying these discounts, for settlement purposes, Plaintiff calculated Brandman’s realistic exposure as
\$39,920. *Id.* ¶ 63.

g. Total Exposure on Adjunct CMs Claims: Plaintiff calculated Brandman’s maximum

exposure on the Adjunct Class claims (excluding PAGA penalties) as \$4,757,022; and realistic exposure after discounts as \$2,730,892, as follows:

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

h. The Allocation to the Class is Fair and Reasonable: The \$1,426,000 of the GSA allocated to Adjunct CMs represents 30% of Defendant's maximum exposure and 53% of its realistic exposure. *Id.* ¶ 70. The average recovery per Adjunct CM of \$801.57 gross and \$486.55. *Id.* ¶ 71. These are substantial payments, especially in light of Defendant's arbitration agreements that would render Plaintiff's class claims worthless if enforced, and compares favorably with similar cases where plaintiffs faced risk based on an arbitration agreement with a class action waiver including *Merlan et al. v. Alliant Int'l University*, Case No. 37-2019-00064053-CU-OE-CTL (San Diego Superior Court, November 2, 2021) (finally approving wage and hour class action settlement with an average recovery per adjunct of \$886 gross and \$511.62 net); *Harris-Foster v. University of Phoenix, Inc.*, Case No. 19019028 (Alameda County Superior Court, March 17, 2021) (finally approving wage and hour class action settlement with an average recovery per adjunct average recovery of \$828 gross and \$516 net); and *Chindamo v. Chapman University*, Case No. 30-2020-01147814-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).

i. 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.

1 Plaintiff alleged that during the ER Class Period, Defendant did not adequately reimburse CMs for
2 business expenses pursuant to Defendant's "Covid-19 Related Temporary Remote Work Policy," in
3 violation of Labor Code § 2802. Hammond Decl. ¶¶ 30, 65. Plaintiff calculated Defendant's maximum
4 liability for unreimbursed business expenses as **\$365,834** (including interest). *Id.* ¶ 66.

5 **Class Certification/ Merits Risk:** Plaintiff applied a 25% for Defendant's contention that
6 individualized issues would predominate including whether expenses incurred by each ER Class Member
7 were reasonable, whether Brandman was aware that ER Class Members incurred such expenses, and
8 whether such expenses were reimbursed. Plaintiff applied a further 25% discount for Brandman's
9 contention that it provided reimbursement for home office expenses upon request to all employees
10 beginning in March 2020, and that beginning in July 2020, Brandman began providing stipends for work-
11 from-home expenses, so even if expenses were incurred, ER Class Members could seek reimbursement
12 for them. After discounts, Brandman's exposure on this claim is **\$205,871**. Hammond Decl. ¶¶ 67-68

13 **j. The Allocation to the ER Class is Fair and Reasonable:** The \$124,00 of the GSA
14 allocated to the ER Class represents 34% of Defendant's maximum exposure and 60% of its realistic
15 exposure. The average net payment to ER Class Members is \$130.90 and the average gross is \$215.65.
16 Hammond Decl. ¶ 73. These are substantial payments when considering that Defendant reimbursed over
17 \$123,000 for expenses during the ER Class Period, and provided ER Class Members with a mechanism
18 for submitting their necessarily incurred expenses. *Id.* ¶ 74.

19 **k. The PAGA Allocation is Fair and Adequate:** Plaintiff calculated Defendant's maximum
20 liability for PAGA penalties as \$2,024,233. The \$35,000 allocated to PAGA represents 2% of
21 Defendant's total exposure and is comparable to (or more than) PAGA allocations approved by courts in
22 similar cases. This allocation is fair and reasonable for several reasons. Hammond Decl. ¶¶ 77-78.

23 First, the overall settlement resulted in robust relief for each Class which is what courts look at
24 when assessing amount attributed to PAGA penalties. *See O'Connor v. Uber Techs., Inc.*, No. 201 F.
25 Supp. 3d 1110, 1134 (N.D. Cal. Aug. 18, 2016) (where settlement for the class claims is robust, the
26 purpose of PAGA may be fulfilled because by providing fair compensation to class members, the
27 settlement has a deterrent effect on defendant and other employers, thus fulfilling the purpose of PAGA).
28 In *Gola v. University of San Francisco*, No. CGC-18-565018 (San Francisco Cnty. Super. Ct. March 3,
2021) a recent case brought by HammondLaw on behalf of adjunct instructors, the court found that
substantial monetary relief in form of statutory penalties under § 226(e) (and fees and costs plaintiff
would seek) acted as a sufficient punishment and deterrent, and awarded only 15% of the full 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. Hammond Decl. ¶¶ 78-79.

Second, Brandman contended that it operated in good faith and reasonably believed it was in compliance with the Labor Code; and overhauled the policies at issue in this lawsuit to bring them into compliance with the Labor Code. 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 International California, Inc.*, 9 Cal. 5th 73, 86 (2020); *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (2016) (significant reduction to PAGA penalties appropriate because the law was not clear and there was thus no deliberate violation).⁴ In light of these changes, the Court would likely reduce any award of PAGA penalties as “unjust, arbitrary and oppressive, or confiscatory” under Labor Code § 2699(i). Hammond Decl. ¶ 80.

Third, Brandman contended that PAGA claims would be found unmanageable because only CMs who actually incurred unpaid wages, unpaid premium pay, or unreimbursed expenses during a particular pay period could recover PAGA penalties, and there is no manageable way to determine who was entitled to penalties. Hammond Decl. ¶ 82; *Raphael v. Tesoro Ref & Mktg. Co.*, 2015 U.S. Dist. LEXIS 130532, at *5 (C.D. Cal. Sept. 25, 2015). Further, in order to recover any PAGA penalties, Plaintiff would be required at trial to prove that each Aggrieved Employee suffered a violation for each pay period the employee worked, which would be difficult in light of Defendant’s contentions on the merits discussed above. Hammond Decl. ¶ 81; *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 individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant.”).

Finally, the \$35,000 allocated to PAGA - 2% of Brandman’s potential exposure - is similar to (or more than) PAGA allocations approved in similar Settlements that were recently approved 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

⁴ Indeed, in an *Amicus Curiae* Brief filed June 16, 2017 in *Steven Price v. Uber Technologies*, Case No. BC554512 (L.A. Superior Ct.), the Labor Commissioner stated that the main purpose of PAGA penalties is “in helping the Labor Commissioner discharge her mandate to: vigorously enforce minimum labor 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).”

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 part serves the deterrent function of a penalty, and that defendant had some arguments of “good faith,” that would mitigate penalties”); *Morse v Fresno Pacific University*, Case No. 19-CV-04350 (Merced County Superior Court) (April 6, 2021) (finally approving an \$1,534,725 wage and hour class action settlement including a \$30,000 PAGA allocation, representing 2% of maximum \$1,194,800 in PAGA penalties); and *Harris-Foster v University of Phoenix*, Case No. RG19019028 (Alameda Superior 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). Hammond Decl. ¶ 78.

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

Defendant strongly disagreed as to the merits of Plaintiff’s claims and is convinced that Plaintiff has no right to seek class-wide relief at all in light of its arbitration agreement. Assuming some of the claims proceeded to trial, the losing party would likely appeal, given that some of the central legal issues in this case have not been conclusively addressed by an appellate court. This process would take years to resolve. Instead, this settlement provides an early resolution of this dispute, and CMs will obtain a recovery in the relatively near future if the settlement is finally approved. *Id.* ¶ 84.

4. Extent of Discovery Completed and Stage of the Proceedings

As described in the Hammond Decl. and above, the parties have engaged in extensive discovery, and were adequately informed to make the decision to settle this case on the proposed terms. *See* Hammond Decl. ¶¶ 20-30.

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, 11-13. Class Counsel have represented thousands of adjunct instructors in over 20 similar unpaid wage cases since 2016, and

recently successfully litigated one such case all the way through trial. *See Id.* These cases – challenging the long-standing industry-wide practice of classifying adjuncts as non-exempt and not paying them for all hours worked – have led to an overhaul of these practices in the industry. *Id.*

Class Counsel considers the settlement to be fair, reasonable and adequate. Hammond Decl. ¶ 84. The average net recovery per Adjunct CM is \$486.65 and the average gross recovery is \$801.57. This is a very good result given that Defendant’s arbitration agreement could have barred any Adjunct class claims. *Id.* ¶¶ 34-35. Further, the per Adjunct recovery compares favorably with the settlements in three recent cases where defendants also had arbitration agreements that could have barred Adjunct class claims. *See Id.* ¶ 72. The average net recovery to ER Class Members is \$130.90 and the average gross is \$215.65. This is, in counsel’s 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. *Id.* ¶ 74.

6. Reaction of the Class Members to The Proposed Settlement

It is premature to address this factor since notice has not yet been sent out. The settlement, however, confers substantial benefit on the CMs and the settlement agreement reasonably tailors each CMs’ payment amount to the number of pay periods they worked for Brandman. S.A. §§ 5.2, 5.3.

C. The Proposed Class Notice Content and Procedure Are Adequate

Constitutional due process requires that class members be provided with notice sufficient to give them an opportunity to be heard in the proceedings. *Mullane v. Central Hanover Bank & Trust*, 339 U.S. 306, 314 (1950). Proper notice must provide class members with sufficient information to make an informed decision to accept, opt out or object to the settlement. *See Wershba*, 91 Cal. App. 4th at 251-252. Here, the proposed Notice meets these standards since it provides all the information a reasonable person would need to make a fully informed decision about the settlement: (1) the material terms of the settlement, (2) the proposed fees and costs of Class Counsel and costs of settlement administration, (3) the proposed Enhancement Awards; (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 court hearing on settlement approval, and (8) how CMs can obtain additional information. *See Cal. Rules of Court*, Rule 3.766 and **Exhibit A** to the SA. Therefore, the Court should approve the Notice.⁵

⁵ The procedure for distribution of notice by first class mail with skip tracing for returned mail (SA § 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.

D. The Service Award for the Class Representative Is Reasonable

Plaintiff will request a Service Award of \$7,500 to recognize the time and effort she expended on behalf of the Class, and the general release she is giving Defendant. Hammond Decl. ¶ 90. The requested award fall 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).

E. The Requested Attorneys' Fees and Costs Are Reasonable

In addition, Plaintiff's counsel will request attorneys' fees of not more than \$516,666.67 (*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. ¶ 88.

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.* ¶ 89.

VI. CONCLUSION

The settlement provides substantial relief for the Classes 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: February 25, 2022

Respectfully submitted,

HAMMONDLAW, P.C.

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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.