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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

**DELFIN MERLAN, JOCELYN TOMAKA,
DIONNE MAXWELL and JEROME
CRICHTON**, individually and on behalf of all
others similarly situated,

Plaintiffs,

vs.

**ALLIANT INTERNATIONAL
UNIVERSITY**, a California Corporation,

Defendant.

Case No. 37-2019-00064053-CU- OE-CTL

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

Date: June 18, 2021
Time: 1:30
Judge: Timothy B. Taylor
Dept.: C-72

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I. INTRODUCTION

Plaintiffs Delfin Merlan, Jocelyn Tomaka, Dionne Maxwell, and Jerome Crichton (“Plaintiffs”) seek preliminary approval of a \$711,500 non-reversionary settlement of their wage and hour claims against Defendant Alliant International University (“Defendant” or “Alliant”) on behalf of approximately 816 adjunct instructors employed by Defendant in California (“Class Members” or “CMs”) from December 2, 2015 through December 31, 2019.¹

Plaintiffs allege that during the Class Period, defined as December 2, 2015 to December 31, 2019, Alliant failed to pay them for all hours worked, including pre-semester preparation time, failed to pay all wages due upon discharge or end of employment, failed to provide CMs with paid off-duty rest breaks when they taught more than 3.5 hours and timely 30-minute meal breaks on rare shifts over 5 hours, and failed to reimburse their necessarily incurred business expenses, including a reasonable portion of their home office and home internet expenses during the pandemic, in violation of Labor Code §§ 226.2, 226.7, 512, 1194, 203, and 2802. Plaintiffs also allege that during the Wage Statement Class Period, defined as October 16, 2019 through to October 31, 2020, Alliant failed to provide CMs with accurate and complete itemized wage statements in violation of Labor Code § 226(a). Alliant denies any wrongdoing.

This Settlement was reached after a thorough and extensive investigation by Plaintiffs’ Counsel, the exchange of documents and information for purposes of mediation, a complete hearing and understanding of Defendant’s defenses, and a full-day mediation session with Lisa Klerman, a skilled and experienced mediator who has mediated numerous wage-hour class and PAGA actions. The settlement, which will result in a gross average recovery of \$871.94 per Class Member and net average recovery of \$498.57 per Class Member for a class of part-time adjunct instructors who worked on average only 1.45 days per week, is an excellent result. This is especially so in light of the fact that each CM entered into arbitration agreements with Plaintiffs and most of the Class Members that, if enforced, would render Plaintiffs’ class claims for largely worthless or difficult to certify (except for the PAGA penalty claims that are not subject to arbitration). Moreover, following the filing of Plaintiffs’ Complaint, Alliant overhauled its compensation and expense reimbursement policies to bring them into compliance with the Labor Code.

As described in further detail below, Plaintiffs’ Counsel, who have extensive experience in litigating similar wage and hour class actions on behalf of adjunct instructors, are of the opinion that the

¹ A copy of the Settlement Agreement is attached as **Exhibit 1** to the Declaration of Julian Hammond, filed herewith.

1 Settlement is fair, reasonable, and is in the best interests of the Class. The Settlement Agreement avoids
2 the risks associated with litigation, especially in light of Defendant's defense that Plaintiffs' claims would
3 be compelled to individual arbitrations, and given the significant disruptions to Defendant's operations
4 and the financial toll caused by the global pandemic. Accordingly, the Court should grant preliminary
5 approval, approve the proposed Notice, and set a date for final approval.

6 **II. OVERVIEW OF THE SETTLEMENT**

7 The Settlement Agreement resolves all claims of the Plaintiffs and the proposed Class alleged in
8 the operative Second Amended Complaint. A summary of the Settlement terms follows:

9 1. Gross Settlement Amount ("GSA") – Alliant will pay a non-reversionary sum of \$711,500
10 to settle this case. SA at § 1.11. Alliant will also pay the employer's share of payroll taxes separately
11 from the Gross Settlement. *Id.*

12 2. Class Definitions and Class Period – The Class includes all persons who are or have been
13 employed by Defendant in California as adjunct professors or part-time lecturers between December 2,
14 2015 and December 31, 2019, SA §§ 1.2, 1.5. The Class Period is defined as December 2, 2015 to
15 October 31, 2020. The Wage Statement Class Period is defined as October 16, 2019 to October 31, 2020.
16 SA §§ 1.25.

17 3. Attorneys' Fees, Costs, and Named Plaintiffs' Service Awards – Class Counsel will seek
18 attorneys' fees of up to \$237,167 (1/3 of the gross settlement amount) and up \$20,000 to reimburse their
19 out-of-pocket litigation costs (SA § 6), and Service Awards of up to \$5,000 each to Plaintiffs Merlan,
20 Tomaka, and Crichton, and up to \$2,500 to Plaintiff Maxwell, for a total of \$17,500. SA § 7.

21 4. Administration Costs – The Parties have mutually agreed to use Simpluris, Inc. as the
22 Settlement Administrator. SA § 9. The Settlement Administrator's expenses shall be reimbursed up to a
23 cap of \$13,000. *Id.*

24 5. PAGA Period and PAGA Payment – The PAGA Period is defined as the period from
25 October 16, 2019 to October 31, 2020. SA § 1.14. The Settlement allocates \$20,000 to PAGA penalties,
26 with \$15,000 to be paid to the California Labor and Workforce Development Agency ("LWDA") as its
27 75% share of PAGA penalties, and \$5,000.00 to be added to the Net Settlement Amount and distributed
28 to the Settlement Class members who worked during the PAGA Period as their 25% share of the
settlement of civil penalties for PAGA claims. SA § 8.

6. Net Settlement Amount ("NSA") – The amount remaining of the GSA after deductions of
attorneys' fees, costs, service awards, settlement administration costs, and LWDA's 75% share of PAGA

penalties, subject to Court approval, will total approximately \$406,833.33. Declaration of Julian Hammond in Support of Plaintiffs' Motion for Final Approval, filed herewith ("Hammond Decl."), ¶ 74. The NSA will be distributed to each Settlement CM *pro rata* based on the number of paychecks issued to him/her during the Class Period and/ or Wage Statement Class Period, with paychecks issued to Class Members after January 1, 2020 subject to a multiplier of 0.5. SA § 5.1.1. This allocation formula relies upon objective evidence of each CM's employment history and tailors the settlement shares to reflect that the only claims CMs are releasing after January 1, 2020 (when Alliant reclassified CMs as non-exempt hourly employees) are under Labor Code §226(a)(9). SA § 16.1. If any CM disagrees with the pay periods information on his/her Notice, s/he may dispute such information. SA § 13. The Settlement Administrator will resolve challenges based on Defendant's records and any documents or other information presented by the CM making the challenge. *Id.*

7. Class Notice – Within fifteen (15) business days of preliminary approval, Alliant will provide Simpluris with the list of all CMs, the number of paychecks issued to each CM, and the date of issuance. SA § 10.1.1. Simpluris will then update the addresses and shall send the Class Notice by first class mail, forwarding requested, substantially in the form attached to the SA as **Exhibit A**, within twenty-five (25) business days of the Preliminary Approval. SA § 10.1.2-3. For all returned Notices, Simpluris will employ skip tracing methods to update addresses and initiate a second mailing. SA § 10.1.4. The procedure for distribution of notice meets the standard requiring that the notice has "a reasonable chance of reaching a substantial percentage of the CMs." *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 974 (1975); *see also Wershba*, 91 Cal. App. 4th at 251.

8. Automatic Participation – Each CM shall automatically receive his/her Settlement share unless s/he opts out. SA § 5.1.3.

9. Opting Out or Objecting – CMs who wish to be excluded from the Settlement must send a written notice to Simpluris requesting to be excluded from the Class, within 60 calendar days of the date the Notices are mailed out. SA §§ 12-13. Any CM who properly requests to be excluded 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 the objection to Simpluris within 60 calendar days of the Notice mailing date. SA § 12. If a CM objects to the Settlement, s/he will remain a member of the Class and if the Court approves the Settlement, s/he will be bound by the terms of the Settlement in the same way and to the same extent as a CM who does not object. *See* SA § 11.3.

10. Tax Consequences of Settlement Payments – For tax purposes, CMs' payments will be

1 allocated 1/3 to wages, and 2/3 to penalties and interest. SA § 5.1.2.

2 11. Scope of Release and Final Judgment – CMs will release all claims alleged against Alliant
3 in the operative Complaint arising during the Class Period, Wage Statement Class Period, and/or PAGA
4 Period. SA § 16.1. Named Plaintiffs will give general releases against Defendant as consideration for
5 their service awards. SA § 16.2.

6 **III. OVERVIEW OF THE LITIGATION**

7 **A. Pleadings**

8 On December 2, 2019, Plaintiffs' Counsel Ackermann & Tilajef and Melmed Law Group filed
9 this action on behalf of Plaintiff Merlan and CMs for Defendant's alleged (1) failure to pay wages for all
10 hours worked in violation of Labor Code §§ 226.2, 1194, 1194.2 and IWC Wage Order No. 4-2001 § 4;
11 (2) failure to authorize and permit paid rest breaks and pay premium pay for missed breaks in violation
12 of Labor Code §§ 226.2, 226.7 and IWC Wage Order No. 4-2001 § 12; (3) failure to provide compliant
13 meal breaks or premiums for missed breaks under Labor Code §§ 226.7, 512 and the IWC Wage Order
14 No. 4-2001 § 11; (4) failure to pay compensation due at the time of discharge in violation of Labor Code
15 §§ 201-203; (5) failure to reimburse business expense in violation of Labor Code § 2802, and (6) unfair,
16 unlawful or fraudulent business practices in violation of Business & Professions Code § 17200, *et seq.*
17 ("UCL"). Hammond Decl. ¶ 14.

18 On October 16, 2020, Plaintiff Tomaka retained HammondLaw and filed her PAGA Notice
19 alleging Defendant's failure to issue accurate itemized wage statements in violation of Labor Code §
20 226(a) and 226.2(a). HammondLaw then entered into a joint prosecution agreement with Plaintiff
21 Merlan's counsel and the parties agree to attend mediation. In February 2021, prior to the mediation,
22 Plaintiffs Crichton and Maxwell – both putative CMs - retained Plaintiffs' Counsel as well. Hammond
23 Decl. ¶ 16-18. On February 11, 2021, Plaintiff Tomaka filed an amended PAGA Notice that included an
24 additional claim under Labor Code §§ 226(a)(9) between January 1, 2020 and October 31, 2020. Id. ¶
25 19.

26 On May 21, 2021 Plaintiffs filed a filed a joint stipulation to file a First Amended Complaint
27 adding Plaintiffs Tomaka, Maxwell, and Crichton; adding a cause of action under Labor Code § 226(e)
28 based on Alliant's alleged violations of Labor Code §§ 226(a), 226.2(a) during the Wage Statement Class
Period; and adding a PAGA cause of action for the underlying labor code violations during the PAGA
Period. Hammond Decl. ¶ 20.

1 **B. Investigation and Discovery**

2 Plaintiff Merlan served formal discovery early in the case, which the parties agreed to stay while
3 they engaged in informal discovery ahead of mediation. Hammond Decl. ¶ 21. In advance of mediation,
4 Defendant produced detailed pay, contract, and scheduling data that allowed Plaintiffs to calculate the
5 class size, number of courses taught by CMs, number of classes that were at least 3.5 hours and/or 5
6 hours long, the average daily rate paid to the CMs during the Class Period, and the average hourly rate
7 paid to CMs after Alliant reclassified CMs as hourly employees. *Id.*

8 Through their own investigation, Plaintiffs' Counsel gathered additional documents and data,
9 including scheduling data and documents from Defendant's website, and conducted interviews and
10 surveys of CMs regarding Plaintiffs' claims. These surveys and interviews confirmed that CMs spent
11 many hours working prior to the start of the contractual period, and routinely made themselves available
12 to students during class break time. Hammond Decl. ¶ 22.

13 From informal discovery, Plaintiffs ascertained that Alliant employed CMs pursuant to uniform
14 employment contracts with contract start dates and end dates that corresponded with the beginning of the
15 course and the last day of the exam period for the course. Hammond Decl. ¶¶ 25-26. Alliant paid CMs,
16 until the beginning of 2020, a fixed per course amount based on the number of units taught, class size,
17 and the program taught in. *Id.* The contract provided the payment amount for the delivery of the course,
18 with that amount "subject to change based on enrollment." *Id.* Plaintiffs ascertained that while the
19 employment contracts stated the first day of the course as the start date, Alliant required CMs to perform
20 work prior to the start of classes, including to prepare and submit course outlines, syllabi, and reading
21 lists. *Id.* ¶ 26.

22 Plaintiffs also ascertained that starting in January 2020, Alliant began reimbursing CMs for their
23 home office expenses by stating that for each hour worked, \$1 of the compensation would be deemed
24 expense reimbursement. *Id.* ¶ 29. However, Alliant did not change the hourly rates listed on CMs wage
25 statements until November 2020, meaning that between January 1, 2020 and October 31, 2020, CMs
26 were provided with wage statements that arguably failed to include the accurate applicable hourly rate,
27 in violation of Labor Code § 226(a)(9). *Id.*

28 Finally, Plaintiffs ascertained that until October 31, 2020, Alliant issued wage statements to CMs
that failed to include the "address of the legal entity that is the employer" in violation of Labor Code §
226(a)(8). *Id.* ¶ 30.

1 **C. Alliant Overhauled Its Compensation System and Other Relevant Policies**

2 As of the beginning of 2020, very shortly after this lawsuit was filed, Alliant reclassified CMs as
3 hourly employees. *Id.* ¶ 31. Alliant changed the employment contracts to include a host of compensable
4 duties including class preparation, addressing student questions/issues about the course, completion of
5 required training, and time spent in rest breaks. Additionally, Alliant added one week to the contract start
6 date and end date in each contract in order to cover work performed prior to the first day of classes/the
7 academic term and after the last day of the academic term/last day of classes. As stated above, Alliant
8 also began reimbursing CMs for their business expenses at the rate of \$1 for every hour paid (i.e. \$1 for
9 every approximately \$30 hours paid). *Id.* Starting in November 2020, Alliant began issuing accurate
10 wage statements that included CMs hourly rates and Alliant’s correct address. *Id.* ¶ 31.

11 **D. Mediation**

12 On February 24, 2021, the Parties participated in a mediation session with Lisa Klerman, a skilled
13 and experienced mediator who has mediated numerous wage-hour class and PAGA actions. Hammond
14 Decl. ¶ 33. Prior to the Mediation, the parties submitted detailed mediation briefs, supported by excerpts
15 of the evidence Defendant provided as part of informal discovery, and the parties’ respective independent
16 research and investigations. *Id.* At mediation, Plaintiffs were confronted with a number of significant
17 hurdles including Alliant’s contention that virtually all CMs’ contracts included an arbitration agreement
18 and that neither Plaintiffs nor CMs could pursue class claims; and Alliant’s contention that it suffered
19 serious financial losses from its ongoing campus closures resulting from the Covid-19 pandemic. *Id.* ¶
20 34-36. Alliant also argued that Plaintiffs faced significant risks on class certification and the merits with
21 respect to each claim for reasons other than the arbitration agreement. *Id.* ¶ 37.

22 Following a full-day mediation, the parties reached the basic terms of a settlement, which are fair,
23 reasonable, and adequate for the reasons discussed below.

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

25 When a negotiated class action settlement has been reached prior to certification – as here – the
26 Court may make an order approving or denying certification of a provisional settlement class. Cal. Rules
27 of Court, Rule 3.769(d). The decision to certify a class is purely a procedural one and should be based
28 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

1 adjudication. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1021 (2012); *Linder*, 23 Cal.
2 4th at 435. All class certification requirements are met in this case.

3 **A. The Class Is Ascertainable and Sufficiently Numerous**

4 Whether a class is ascertainable is determined by examining the class definition, the size of the
5 class, and the means available for identifying class members. *See Reyes v. Board of Supervisors*, 196
6 Cal. App. 3d 1263, 1271 (1987). Class members are “ascertainable” when they may be readily identified
7 without unreasonable expense or time by reference to official records. *See Thompson v. Auto. Club. of*
8 *S. Cal.*, 217 Cal. App. 4th 719, 728 (2013); *Aguilar v. Cintas Corp. No. 2*, 144 Cal. App. 4th 121, 136
9 (2006) (“[M]embers of Plaintiff’s proposed class are ascertainable from Cintas’s payroll records, which
10 identify each employee by name, job code, dates of employment and rate of pay.”).

11 These criteria are met here, as Defendant’s records are sufficient to permit identification of the
12 members of the Class. SA § 10.1.1. The Class consists of approximately 816 members and is therefore
13 sufficiently numerous. Hammond Decl. ¶ 25. *See Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934
14 (1981) (42 people “is quantitatively sufficient for class action”); *see also* 1 Newberg on Class Actions §
15 3.12 (5th ed. 2011) (“[A] class of 40 or more members raises a presumption of impracticability of
16 joinder.”).

17 **B. “Community of Interest” Exists Among CMs and Among Wage Statement CMs**

18 A “community of interest” requirement embodies three factors: (1) predominant common
19 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
20 class representatives who can adequately represent the class. *Fireside Bank v. Super. Court*, 40 Cal. 4th
21 1069, 1089 (2007). Each of these elements is satisfied here.

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

23 Where the defendant-employer’s policies or conduct is uniformly directed at a class of employees,
24 as it is here, the class-wide impact of the defendant’s policies satisfies the commonality requirement. *See*
25 *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 331 (2004) (upholding class certification,
26 where the common issue was whether the employer properly classified grocery store managers as exempt
27 from California’s overtime requirements). Here, Plaintiffs challenge common pay policies, wage
28 statement policies, rest and meal break practices, and reimbursement policies, raising predominant
common questions of law and fact. Some of the common question of law and fact as to CMs’ include:
(1) whether CMs were non-exempt under state law, which would trigger an obligation to include hours
worked on the wage statements issued to CMs; (2) whether Alliant’s per course pay constitutes a piece

1 rate; and (3) whether the compensation set out in the course contracts covered work that CMs performed
2 prior to the beginning of their contract period. Other common questions include whether Alliant had a
3 good faith belief that no wages were due to CMs; whether the wage statements Alliant issued failed to
4 comply with § 226(a); whether the alleged violation of § 226(a) was knowing and intentional; and
5 whether CMs suffered injury as a result.

6 **2. Plaintiffs' Claims Are Typical of the Class Claims.**

7 The test of typicality is whether Plaintiffs' and other CMs have the same or similar injury, whether
8 the action is based on conduct that is not unique to the named plaintiffs, and whether other CMs have
9 been injured by the same course of conduct. *See Seastrom v. Neways, Inc.*, 149 Cal. App. 4th 1496, 1502
10 (2007); 1-3 California Class Actions Practice and Procedure (2007) § 3.02. Here, Plaintiffs' claims are
11 typical of the Class that they seek to represent because they were subject to the same compensation
12 policies and practices, the same classification policies, suffered the same type of injury, and seek the
13 same types of relief, as the putative class.

14 **3. Plaintiffs and Their Counsel Will Adequately Represent the Class.**

15 “Adequacy of representation depends on whether the plaintiffs' attorney is qualified to conduct
16 the proposed litigation and the plaintiffs' interests are not antagonistic to the interests of the class.” *Caro*
17 *v. Procter & Gamble Co.*, 18 Cal. App. 4th 644, 669, n.21 (1993) (citations omitted). Both elements are
18 satisfied here. Plaintiffs' Counsel are highly skilled and experienced in similar cases and have extensive
19 class action litigation experience. Plaintiffs' Counsel have been appointed class counsel in numerous
20 class action suits and have represented thousands of adjunct instructors in similar unpaid wage cases
21 since 2016, including numerous cases that were certified for settlement purposes. Hammond Decl. ¶¶ 6,
22 10-13 and **Exhibit 2**; Declaration of Craig Ackermann, filed herewith, at ¶¶ 4-13; Declaration of Jonathan
23 Melmed, filed herewith, at ¶¶ 4-8. Plaintiffs are committed to representing the interests of the Class, do
24 not have any conflicts with any CM, and their interests are virtually coextensive with those of the CMs.
25 Hammond Decl. ¶ 4.

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

27 Plaintiffs' and CMs' claims are based on Plaintiffs' contentions that Defendant had uniform
28 policies and/or practices classifying CMs as exempt (from overtime and thus also exempt from the hours
worked requirement in Labor Code § 226(a))²; paying them by the piece; failing to compensate them for

² The crux of Plaintiff's misclassification claim was that the CMs were misclassified as exempt under state law, because they did not earn the monthly salary equivalent of at least two times the state (footnote continued)

1 the time spent working prior to the beginning of their contracts; failing to provide rest and meal breaks
2 and pay premium pay for missed breaks; failing to pay wages due upon discharge; issuing inaccurate
3 wage statements; and failing to reimburse business expenses. All these claims involve common evidence
4 including CMs' uniform contracts, handbooks, compensation policies, reimbursement policies, and wage
5 statements. It would thus be inefficient to resolve these claims at separate trials. *See Bufile v. Dollar Fin.*
6 *Grp., Inc.*, 162 Cal. App. 4th 1193, 1208 (2008). The class action mechanism will also allow Plaintiffs
7 and CMs to obtain redress for their relatively small claims, which would be impractical to litigate on an
8 individual basis.

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

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

11 Court approval of a class action settlement is a two-step process: (1) a preliminary review and
12 contingent approval by the trial court, and (2) after notice has been distributed to the CMs, a hearing and
13 a detailed review that includes their responses. Manual for Complex Litigation (Fourth) § 21.6
14 ("Manual"); Cal. Rules of Court, Rule 3.769(a); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800-
15 1801 (1996). Thus, the trial court's preliminary approval of the settlement is simply a conditional finding
16 that the settlement appears to be within the range of acceptable settlements. *See, e.g.*, 4 Newberg on Class
17 Actions § 11.25 (4th ed. 2002); Manual § 21.6. Applying the criteria for preliminary approval in this
18 case reveals a substantial basis for granting the preliminary approval this Motion seeks.

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

20 In analyzing whether a settlement is fair and reasonable, courts consider a number of factors: (1)
21 the strength of the plaintiffs' case balanced against the settlement amount; (2) the risk, expense,
22 complexity and likely duration of further litigation, the risk of maintaining class action status through
23 trial; (3) the extent of discovery completed and the stage of the proceedings; (4) the experience and view
24 of counsel; and (5) the reaction of the CMs to the proposed settlement. *Kullar v. Foot Locker Retail,*
25 *Inc.*, 168 Cal. App. 4th 116, 133 (2008) (quoting *Dunk*, 48 Cal. App. 4th at 1801). Indeed, a settlement

26 minimum wage for full-time employment *based on a 40-hour workweek*. See Labor Code §§ 515(a) and
27 (c) (noting that the professional exemption requires pay of twice minimum wage based on "full time
28 employment", which is a 40 hour workweek), and 226(a) and (j) (stating that "total hours worked" is not
required on wage statements, if and only if the employee is exempt from state overtime pay under Labor
Code § 515). Hammond Decl. ¶ 41. Notably, the federal FLSA overtime exemption for professional
employees includes only a requirement of pay at twice the federal minimum wage for *actual hours*
worked, which recently became the law in California for adjuncts, but which only became effective on
September 9, 2020. See Labor Code § 515.7. Hammond Decl. ¶ 46.

1 is initially “presumed to be fair” when (1) it “is reached through arm’s length bargaining; (2) investigation
2 and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced
3 in similar litigation; and (4) the percentage of objectors is small.” *Chavez v. Netflix, Inc.*, 162 Cal. App
4 4th 43, 52 (2008) (quoting *Dunk*, 48 Cal. App. 4th at 1802).

5 The settlement here represents 50% of Alliant’s realistic exposure (excluding PAGA penalties)
6 after considering Defendant’s actual and potential defenses. Hammond Decl. ¶ 69. Given the substantial
7 relief obtained for the Class, the very real risk posed by Alliant’s arbitration agreement and its other
8 defenses, such as its defense that it had a good faith reliance on the federal exemption and thus its alleged
9 violation of Labor Code § 226 was not knowing and intentional, and the uncertainties and delays of
10 litigation during a pandemic, the settlement meets the criteria for preliminary approval. *Id.*

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

12 California courts recognize that “a presumption of fairness exists where ... [a] settlement is
13 reached through arms-length bargaining.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224,
14 245 (2001) (citation omitted); *see also Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-
15 45 (2009) (upholding trial court’s determination that settlement was “fair, reasonable and adequate”
16 where the settlement “provided valuable benefits to the class ... that were ‘particularly valuable in light
17 of the risks Plaintiffs would have faced if she proceeded to litigate her case.’”).

18 Here, the settlement is the result of extensive settlement negotiations between the parties
19 conducted at arm’s length and informed by substantial factual and legal investigation. Throughout this
20 case, the Class has been represented by counsel with extensive experience in wage and hour litigation,
21 and, in particular, class actions alleging similar types of claims. Hammond Decl. ¶¶ 6, 10-13; Ackermann
22 Decl. at ¶¶ 4-13; Melmed Decl. at ¶¶ 4-8. Class Counsel have spent a considerable amount of time
23 prosecuting this case, including, but not limited to, drafting pleadings, researching California law, serving
24 formal discovery, meeting and conferring with Defendant’s counsel, engaging in extensive informal
25 discovery, analyzing documents and data produced by Defendant, conducting surveys, preparing for and
26 attending a full-day mediation, and negotiating and finalizing the settlement agreement and related
27 documents. Hammond Decl. ¶¶ 21-33. As discussed above, the mediation session occurred before a
28 skilled, experienced mediator Lisa Klerman. *Id.* ¶ 33.

29 **2. The Settlement Amount is Fair and Reasonable Considering Potential Recovery and**
30 **the Risks of Litigating the Case**

31 Comparison of the extent of class recovery to the strength of Plaintiffs’ case is the most important
32 factor in analyzing the fairness of the settlement. *See Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App.
33

1 4th 116, 130 (2008). The proposed settlement of \$711,500 easily passes the *Kullar* test as it will provide
2 the class with 50% of the recovery that could realistically be achieved through further litigation.
3 Hammond Decl. at ¶ 69. This does not include a substantial discount that can be applied to the Class
4 claims for the arbitration agreements which would arguably lead to potentially no recovery for the class.
5 Id. Plaintiffs' Counsel estimate that while a complete victory at trial would result in a maximum possible
6 recovery for the CMs' of \$2,573,736 (including interest and excluding PAGA penalties), the realistic
7 potential maximum recovery for the CMs (assuming Plaintiff could somehow defeat Defendant's
8 arbitration agreements) is **\$1,431,605** (including interest and excluding PAGA penalties). Hammond
9 Decl. ¶ 69.

10 a. **Inaccurate Wage Statements (Labor Code § 226(a), (e), and 226.2(a)):** Plaintiffs allege
11 that from October 16, 2019 until December 31, 2019, CMs, as non-exempt piece rate employees, were
12 entitled to wage statements that listed their hours worked, hourly rate, and piece rate information pursuant
13 to Labor Code § 226(a)(2), (3), (9) and 226.2(a). Hammond Decl. ¶ 41. However, Plaintiffs allege
14 Alliant did not track CMs' hours, and did not include on their wage statements any entries for hours
15 worked or applicable hourly rates, or piece-rate information from October 16, 2019 through to the end of
16 December 2019, in violation of Labor Code § 226(a) and 226.2(a). *Id.*

17 Plaintiffs further allege that from January 1, 2020, and until October 31, 2020, Alliant listed the
18 incorrect hourly rate in CMs wage statements in violation of Labor Code § 226(a)(9). During this period,
19 Alliant started reimbursing CMs for home office expenses at the rate of \$1 per hour, which was deducted
20 from their hourly rate. However, Alliant did not change the hourly rate on CMs wage statements to reflect
21 the \$1 for every hour of work in reimbursement, and did not separately list this amount on CMs wage
22 statements. As a result, during the Wage Statement Class Period, Alliant allegedly issued wage statements
23 that failed to include the accurate applicable hourly rate, in violation of Labor Code § 226(a)(9).³
24 Hammond Decl. ¶ 40.

25 Plaintiffs calculated Defendant's maximum liability on the Labor Code § 226(e) claim as

26 ³ See *Gatusso v. Harte Hanks Shoppers, Inc.*, 42 Cal.4th 554, note 6 (Cal. 2007) (noting that "In the
27 future, employers that provide business expense reimbursement to employees through increases in base
28 salary or commission rates should, in providing the documentation required by section 226, subdivision
(a), separately identify the amounts that represent payment for labor performed and the amounts that
represent reimbursement for business expenses."). Thus, even if Defendant's reimbursement defense
were valid to the § 2802 claim, it would arguably give rise to another Labor Code § 226 claim for the
period where the extra \$1 amount was not separately broken out.
(footnote continued)

1 **\$288,850.⁴ Id. ¶ 43.**

2 **Class Certification:** Plaintiffs applied a nominal 10% discount for the risk of non-certification
3 because wage statement claims are particularly well-suited to class certification. *See Lubin v. The*
4 *Wackenhut Corp.*, 5 Cal. App. 5th 926 (2016). Hammond Decl. ¶ 44.

5 **Merits Risks:** As to the merits, Defendant asserted that it acted in good faith and thus did not
6 “knowingly and intentionally” fail to provide compliant wage statements which is an argument has been
7 recognized by the federal district courts.⁵ Hammond Decl. ¶ 45. Defendant also asserted that CMs
8 qualified as exempt employees and thus were not entitled to wage statements that included a breakdown
9 of their hours and applicable hourly rates in effect or piece-rate information.⁶ Id.

10 Despite Defendant’s actual and potential arguments,⁷ Plaintiffs believed the merits risk was small,
11 especially on their Labor Code § 226(a)(9) claim stemming from Alliant’s failure to separately list the
12 reimbursement it paid CMs, and accordingly applied another modest 10% discount. Hammond Decl. ¶
13 46. Hence, Plaintiffs calculated Alliant’s realistic exposure after applying discounts for this claim as
14 **\$233,968. Id. ¶ 48.**

15 **b. Unpaid Wages Claim (Labor Code § 1194 and 226.2):** Plaintiffs allege that during the
16 Class Period, Alliant paid CMs a fixed amount per course, which was based on the number of units
17 taught, class size, and program and which were “subject to change based on enrollment.” Hammond Decl.
18 ¶ 26. Plaintiffs therefore contended that CMs were not salaried (which is defined as a predetermined

19 ⁴ Plaintiffs also contend that Alliant issued wage statements that failed to include the employer’s legal
20 address, in violation of Labor Code § 226(a)(8), because Defendant listed the address of its payroll
21 department rather than its address on the California Secretary of State website. Hammond Decl. ¶ 42.
22 This violation overlaps with the other wage statement violations and does not give rise to additional
23 statutory penalties under Labor Code § 226(e).

24 ⁵ 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). Hammond Decl. ¶ 45.

⁶ Having litigated similar claims, Plaintiffs’ 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.
¶ 46.

⁷ As to Plaintiffs’ Labor Code § 226(a)(8) claim, Defendant asserted that an employer’s payroll
department is the “address” under Labor Code § 226(a)(8). *Mejia v. Farmland Mut. Ins. Co.*, 2018 U.S.
Dist. LEXIS 106856, at *14 (E.D. Cal. June 26, 2018). Hammond Decl. ¶ 47.

1 amount of money that is not subject to reductions based on quality or quantity of work) but were rather
2 paid on a piece rate basis, with the piece being the course. *Id.*; *Negri v. Koning & Assocs.*, 216 Cal. App.
3 4th 392, 399 (2013). Defendant was therefore required, but failed, to pay CMs hourly and separately from
4 the piece for the time spent performing “non-productive” tasks, pursuant to Labor Code § 226.2(a)(1).
5 Plaintiffs allege that CMs’ course pay arguably covered only hours of course instruction but did not
6 compensate them for non-classroom teaching time such as work performed prior to the start of classes,
7 and during the semester, including grading, attending faculty meetings, meeting with students, and the
8 like. Hammond Decl. ¶ 49. However, during discovery and investigation, Plaintiffs acknowledged
9 Defendant’s contention that the course rate included certain “non-productive” tasks performed outside of
10 classroom instruction that course contracts had provided for. *Id.* Accordingly, for purposes of settlement,
11 Plaintiffs limited their claim for unpaid wages to work performed prior to the start of the contract (and
prior to the first day of classes) on the basis that Alliant did not compensate for work performed prior to
the start date of the Contract. *Id.*

12 Plaintiffs calculated Alliant’s maximum exposure on the unpaid wages claim as **\$321,859**
13 (including interest). Hammond Decl. ¶ 50.

14 **Class Certification Risks:** Defendant argued that there was risk of non-certification on the theory
15 that the course rate included all the activities performed prior to the Course and that the amount of time
16 each CM spent on pre-course work would lead to individualized issues. Hammond Decl. ¶ 51. Plaintiffs
applied a minimal 10% discount for this contention which reduced Defendant’s liability to \$289,673. *Id.*

17 **Merits Risk:** As to the merits, Defendant argued that CMs’ per-course piece rate compensation
18 built into it the hours worked before the start of the contract so there were no unpaid wages; and that the
19 average pre-course work by CMs was much less than the estimated 10 hours, especially for the 13% of
20 courses taught by CMs that were repeat courses. *Id.* ¶ 52. Plaintiffs applied a further 25% discount for
these risks which reduced Alliant’s realistic exposure for settlement purposes to **\$217,255**. *Id.*

21 **c. Rest Break Claim (Labor Code § 226.7 and 226.2):** Plaintiffs allege that during the
22 Class Period, Defendant compensated CMs on a piece-rate basis, and was required, but failed, to pay
23 CMs hourly and separately from the piece for the time spent on rest breaks pursuant to Labor Code §
24 226.2(a)(1). Thus, CMs who worked 3.5 hours or more were entitled to hourly and separate pay for rest
25 breaks. Defendant did not pay hourly and separately for these rest breaks, in violation of Labor Code §
26 226.2, and CMs were entitled to premium (at one hour of their average pay) for each unpaid rest break.
27 *See Amaro v. Gerawan Farming, Inc.*, No. 1:14-cv-00147-DAD-SAB, 2016 U.S. Dist. LEXIS 112540,
28

1 at *4-5, 15-16 (E.D. Cal. Aug. 23, 2016). Hammond Decl. ¶ 53. Plaintiffs calculated Alliant's exposure
2 on this claim as **\$273,857** (including interest). *Id.*

3 **Class Certification Risk:** Defendant argued that an allegation of missed rest breaks would lead
4 to individualized issues as to why a particular adjunct was not able to take a break. However, because
5 CMs were compensated on a piece rate basis, Plaintiffs contended that under Labor Code § 226.2, Alliant
6 was required to pay separately and hourly for rest break time, even if rest breaks were provided. Thus,
7 Plaintiffs applied a nominal 10% discount for the certification risk because they believed they would be
8 able to certify this claim on the common evidence that CMs' compensation was a piece rate, which
9 reduced Defendant's liability to \$246,472. Hammond Decl. ¶ 55.

10 **Merits Risk:** As to the merits, Alliant contended that CMs qualified as exempt employees and
11 thus were not entitled to rest breaks. Hammond Decl. ¶ 56. Alliant further contended that CMs controlled
12 their own class schedules and could take a rest break if they wanted to. *Id.* Plaintiffs applied a further
13 25% discount based on this argument which reduced Alliant's exposure on the rest break claim to
14 \$184,854. *Id.*

15 **d. Meal Break Claim (Labor Code § 226.7 and 512):** Plaintiffs allege that, as non-exempt
16 employees, CMs were entitled to an off-duty 30-minute meal break before the end of the fifth hour of
17 each shift pursuant to Labor Code § 512. Hammond Decl. ¶ 57. However, Plaintiffs allege that during
18 the Class Period, Defendant imposed uniform policies and/or practices that impeded CMs' ability to take
19 meal breaks, including the requirement and/or expectation for CMs to be available to students
20 immediately before and after class, and to answer students' questions during class breaks. Alliant had no
21 policy or practice of paying premium pay for missed meal breaks. *Id.* Plaintiffs calculated Defendant's
22 maximum liability on the meal break premium pay claim as **\$116,995**. *Id.* ¶ 58.

23 **Class Certification Risks:** Plaintiffs applied a 25% discount for the risks of non-certification
24 given the individualized issues resulting from each CM teaching different courses on different days, with
25 different class lengths. *Id.* ¶ 58; See *Lampe v. Queen of the Valley Medical Center*, 19 Cal. App. 5th
26 832, 228 ("To determine why each employee did not take their first meal break after five hours would
27 require an individualized determination and review of individual employee files and pay stubs"). This
28 reduced Defendant's liability to \$87,746. Hammond Decl. ¶ 59.

Merits Risk: As to the merits, Plaintiffs applied a 25% discount based on the arguments that the
Class was exempt; and that CMs controlled their own class schedules and if they failed to take a meal
break it was as a matter of choice and that the assumed 100% violation rate was highly unrealistic. *Id.* ¶

60. After applying discounts, Plaintiffs calculated Alliant's exposure on the meal break claim as **\$65,810**.
Id.

e. **Waiting Time Penalties Claim (Labor Code § 201-203):** Plaintiffs contend that, during the Class Period, because CMs were owed unpaid wages for work prior to the beginning of their contracts, and for missed premium pay, CMs were not paid all wages due upon discharge from employment, in violation of pursuant to Labor Code § 201. Pursuant to Labor Code § 203, formerly employed CMs are entitled to 30 days of wages as waiting time penalties. Hammond Decl. ¶ 61. Plaintiffs calculated Alliant's maximum liability for waiting time penalties as **\$1,374,489**. *Id.* ¶ 62.

Class Certification Risks: Plaintiffs applied a nominal 10% discount for the risk on class certification. Hammond Decl. ¶ 63. This reduced Alliant's liability to **\$1,237,040**.

Merits Risk: Plaintiffs applied a 50% discount on the merits because Alliant argued that it had a good faith dispute that CMs were properly classified as exempt, and were not owed any unpaid wages or premium pay. *Id.* ¶ 64. This defense could negate the willfulness requirement of Labor Code § 203 and reduce the waiting time penalties to a fraction of what Plaintiffs claimed. *See Barnhill v. Roberts Saunders & Co.*, 125 Cal. App. 3d 1, 8-9 (1981) (an employer's failure to pay wages is not "willful," if the legal duty to pay them was unclear at the time of the violation.); *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1201 (2008) ("a good faith dispute that wages are due will preclude imposition of waiting time penalties under Section 203.").⁸ After applying discounts, for settlement purposes, Plaintiffs determined that Alliant's exposure on the waiting time penalties claim is **\$618,520**. Hammond Decl. ¶ 64.

f. **Unreimbursed Expenses (Labor Code § 2802):** Plaintiffs allege that during the Class Period, Alliant expected and/or required CMs to pay out of pocket for expenses including cell phone and home office expenses to perform their job duties. Hammond Decl. ¶ 65. However, until January 2020, Alliant did not have a policy of reimbursing CMs' for these expenses in violation of Labor Code § 2802. Plaintiffs calculated Alliant's liability for unreimbursed expenses as **\$197,687**. *Id.*

⁸ *see also* Cal. Code Regs., tit. 8, § 13520 ("(a) Good Faith Dispute ("A 'good faith dispute' that any wages are due occurs when an employer presents a defense, based in law or fact which, if successful, would preclude any recover on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist. Defenses presented which, under all the circumstances, are unsupported by any evidence, are unreasonable, or are presented in bad faith, will preclude a finding of a 'good faith dispute.'"))).

1 **Class Certification Risk:** Plaintiffs acknowledge that there are risks to class certification based
2 on the fact that there was no written policy requiring CMs to incur home office or cell phone expenses.
3 Additionally, there were varying practices with regard to incurring expenses by CMs, which presents an
4 obstacle to class certification as well. Therefore, Plaintiffs applied a 25% reduction for class certification
which reduced Alliant’s liability to **\$148,265**. Hammond Decl. ¶ 66.

5 **Merits Risk:** Plaintiffs applied a further 25% discount based on anticipated arguments that even
6 if expenses were incurred, they were voluntary and minimal. After applying these discounts, for
7 settlement purposes, Plaintiffs calculated Alliant’s realistic exposure to be **\$111,199**. Hammond Decl. ¶
8 67.

9 **g. Risk Presented by Defendant’s Arbitration Agreement:** Alliant contended that, during
10 the Class Period, virtually all CMs’ employment contracts included an agreement providing that “any
11 disputes arising hereunder will be settled by binding arbitration” and Plaintiffs had therefore waived their
12 rights to pursue class claims. *Lamps Plus, Inc. v. Varela*, 587 U.S. ___, 139 S. Ct. 1407 (2019) (a court
13 may not compel class arbitration unless agreement expressly provides for it); Hammond Decl. ¶ 34.
14 Moreover, in 2020, Alliant expanded the arbitration agreement to include an express class action waiver
15 providing that “neither Employee nor the University shall be entitled to join or consolidate in arbitration
16 any claim . . . nor bring in arbitration any claim as a representative or member of a class.” Thus,
17 Defendant contended that Plaintiffs’ class claims arising during the Class Period (which ends December
31, 2019) and the Wage Statement Class Period (which extends to October 31, 2020) were potentially
worthless. *Id.*

18 Plaintiffs contended that their PAGA claims are not subject to arbitration and they could litigate
19 these claims regardless of the Alliant’s arbitration agreement. Plaintiffs further contended that the court
20 would not find that the pre-2020 arbitration agreement barred class claims because they provided for the
21 application of California law, which strongly supports the vindication of Labor Code rights through a
22 class action and which opens up arguments that some claims, like the minimum wage off the clock claims,
23 would be non-arbitrable. *See Garrido v. Air Liquide Indus. U.S. LP*, 241 Cal. App. 4th 833, 846 (2015)
(finding class waiver unenforceable under *Gentry* because FAA did not apply). Further, Plaintiffs
24 contended that they could potentially file mass individual arbitrations on behalf of CMs against Alliant.
25 *Id.* However, Alliant’s contention that Plaintiffs would not be able to litigate class claims presented a
26 serious risk to continued litigation. Hammond Decl. ¶ 35.

1 **h. Total Exposure on All Claims:** Plaintiffs calculated Alliant’s maximum exposure on the
2 Class claims (including interest excluding PAGA) as **\$2,573,736** Hammond Decl. ¶ 68. After discounts
3 for the certification and merits applicable to each of Plaintiffs’ claims, Plaintiffs estimated Defendant’s
4 *realistic* exposure as **\$1,431,605**. *Id.* Before discounts, the Gross Settlement of \$711,500 represents
5 28% of the maximum exposure (excluding PAGA); after discounts, the Gross Settlement represents 50%
6 of the realistic exposure. *Id.* ¶ 69. This is an excellent result in light of the risk posed by Alliant’s
7 arbitration agreement, and the unprecedented social and economic upheaval resulting from the Covid-19
8 pandemic, which raised the prospect of litigation against a defendant facing declining enrollment and
9 revenues, and in a Court that Plaintiffs expected would be faced with a backlog of urgent matters as a
10 result of the pandemic. *Id.* ¶ 34-36.

11 **i. PAGA Allocation is Fair and Adequate:** Plaintiffs calculate there were 3,001 pay
12 periods with a Labor Code violation during the PAGA Period. Hammond Decl. ¶ 70. Using a penalty of
13 \$100 per pay period under Labor Code § 2699 (because Defendant never received notice from the Labor
14 Commissioner or the Court so there are arguably no “subsequent” violations) Defendant’s maximum
15 exposure to PAGA Penalties is **\$300,100** (assuming the Court would not allow “stacking” of PAGA
16 penalties for each separate Labor Code violations). Hammond Decl. ¶ 70; *see Castillo v. ADT, LLC*, 2017
17 U.S. Dist. LEXIS 10579, at *11 (E.D. Cal. Jan. 24, 2017). The \$20,000 allocated to PAGA penalties
18 represents 7% of Defendant’s total exposure to PAGA penalties. This allocation is fair and reasonable
19 for several reasons.

20 First, the overall settlement resulted in robust relief of \$871.94 gross average and \$498.56 net
21 average amount per CM, which is what courts look at when assessing amount attributed to PAGA
22 penalties. *See O’Connor v. Uber Techs., Inc.*, No. 201 F. Supp. 3d 1110, 1134 (N.D. Cal. Aug. 18, 2016)
23 (where settlement for the class claims is robust, the purpose of PAGA may be fulfilled because by
24 providing fair compensation to class members, the settlement has a deterrent effect on defendant and
25 other employers, thus fulfilling the purpose of PAGA). In *Gola v. University of San Francisco*, No.
26 CGC-18-565018 (San Francisco Cnty. Super. Ct. March 3, 2021) a recent case brought by HammondLaw
27 on behalf of adjunct instructors, the court found that substantial monetary relief in form of statutory
28 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. ¶ 71.

1 Second, Alliant contended that the Court would reduce any award of PAGA penalties as “unjust,
2 arbitrary and oppressive, or confiscatory” under Labor Code § 2699(i) because Alliant operated in good
3 faith and reasonably believed it was in compliance with the Labor Code, and conducted an overhaul of
4 its compensation policies and practices designed to bring them into compliance with the Labor Code after
5 the filing of Plaintiff’s complaint. Hammond Decl. ¶ 72. Therefore, it was unlikely that the Court would
6 award more than the actual amount owed on some of the underlying claims. *See Cotter v. Lyft, Inc.*, 193
7 F. Supp. 3d 1030, 1037 (2016) (significant reduction to PAGA penalties appropriate because the law was
8 not clear and there was thus no deliberate violation); *Magadia v. Wal-Mart Assocs., Inc.*, 384 F. Supp.
9 3d 1058, 1101 (N.D. Cal. 2019) (noting awards of 30% of the maximum sought where defendants
10 attempted to comply with the law, 28% and 18% where defendants were not aware they were violating
11 the law and took prompt steps to correct once notified). *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th
12 504, 529 (2018) (affirming award of 10% of the maximum penalty because there were “good faith
13 attempts to comply with meal break obligations and because the court found the violations were
14 minimal.” Indeed, in an *Amicus Curiae* Brief filed June 16, 2017 in *Steven Price v. Uber Technologies*,
15 Case No. BC554512 (L.A. Superior Ct.), the Labor Commissioner stated that the main purpose of PAGA
16 penalties is “in helping the Labor Commissioner discharge her mandate to: vigorously enforce minimum
17 labor standards in order to ensure employees are not required or permitted to work under substandard
18 unlawful conditions or for employers that have not secured the payment of compensation, and to protect
19 employers who comply with the law from those who attempt to gain a competitive advantage at the
20 expense of their workers by failing to comply with minimum labor standards. Cal. Labor Code §90.5(a).”

21 Third, Alliant contended that the PAGA claims would be found unmanageable because only CMs
22 who actually incurred unpaid wages, unpaid premium pay, or unreimbursed expenses during a particular
23 pay period could recover PAGA penalties, and there is no manageable way to determine who was entitled
24 to penalties. Hammond Decl. ¶ 73; *Raphael v. Tesoro Ref & Mktg. Co.*, 2015 U.S. Dist. LEXIS 130532,
25 at *5 (C.D. Cal. Sept. 25, 2015). Further, in order to recover any PAGA penalties, Plaintiffs would be
26 required at trial to prove that each Aggrieved Employee suffered a violation for each pay period the
27 employee worked, which would be difficult in light of Defendant’s contentions on the merits discussed
28 above. *See Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011)
29 (“Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the
30 plaintiff has not proven suffered a violation of the Labor Code by the defendant.”).

31 Finally, the amount of the Gross Settlement allocated to PAGA - 3% of the Gross Settlement - is

1 similar to (or more than) PAGA allocations approved in six similar adjunct Settlements that were recently
2 approved. Hammond Decl. ¶ 74.

3 **3. The Risk, Expense, Complexity and Likely Duration of Further Litigation and the**
4 **Risk of Maintaining Class Action Status Through Trial Further Support the**
5 **Fairness and Reasonableness of the Settlement**

6 Plaintiffs believe that the claims asserted in this case have merit and are supported by available
7 evidence. Defendant strongly disagreed as to the merits of Plaintiffs' claims and is convinced that
8 Plaintiffs have no right to seek class-wide relief at all. Besides the significant risk associated with
9 Defendant's arbitration agreement, Plaintiffs would have to clear other hurdles associated with certifying
10 the Class claims and would potentially face pre-trial dispositive motions; and whichever claims cleared
11 that hurdle would face trial. Regardless of the outcome at trial, the losing party would likely appeal. This
12 process would take years to resolve under normal circumstances, and even longer as a result of the Covid-
13 19 shutdown. Moreover, Alliant's financial well-being is threatened by the pandemic, just like that of
14 many other universities, and even if Plaintiffs ultimately prevailed years from now, it is possible that
15 Alliant would then have no money to satisfy the judgment. Instead, this settlement provides an early
16 resolution of a dispute, and CMs will recover in the relatively near future if the settlement is finally
17 approved.

18 **4. The Extent of Discovery Completed and The Stage of the Proceedings**

19 As described in detail in the Hammond Decl., the parties have engaged in extensive investigation
20 and discovery, and were adequately informed to make the decision to settle this case on the proposed
21 terms. Hammond Decl. ¶¶ 21-34.

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

23 As discussed above, Class Counsel have extensive experience in class action litigation and, in
24 particular, wage-and-hour class actions brought on behalf of adjunct instructors, and have been
25 determined by numerous courts to be adequate class counsel. Hammond Decl. ¶¶ 6-13; Ackermann Decl.
26 at ¶¶ 4-13; Melmed Decl. at ¶¶ 4-8. Class Counsel have represented thousands of adjunct instructors in
27 over a dozen similar unpaid wage cases since 2016, and HammondLaw recently litigated one such case
28 through trial. Hammond Decl. ¶ 11; Ackermann Decl. at ¶ 13; Melmed Decl. at ¶ 8.

Class Counsel considers the settlement to be fair, reasonable and adequate. Hammond Decl. ¶ 75;
Ackermann Decl. at ¶ 14; Melmed Decl. at ¶ 9. The average net recovery is \$498.56 net per Class Member
and the average gross recovery is \$871.92. *Id.* ¶ 75. These are substantial recovery amounts, especially
considering CMs worked on average only 1.45 days per week. *Id.* ¶ 62. These amounts compare very

1 favorably with a similar adjunct wage and hour settlement recently approved by the Alameda County
2 Superior Court where plaintiff faced a significant risk based on an arbitration agreement and which
3 resulted in average payment per adjunct of \$515.85 net and \$830.60 gross. *Harris-Foster v. University*
4 *of Phoenix*, No. RG19019028 (March 17, 2021). Hammond Decl. ¶ 76.

5 **6. Reaction of The CMs to The Proposed Settlement**

6 It is premature to address this factor, since notice has not yet been sent. The settlement, however,
7 confers substantial benefit on the CMs and reasonably tailors each CM's claim to the amount he or she
8 will receive. This promises an overall favorable response.

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

10 Constitutional due process requires that CMs be provided with notice sufficient to give them an
11 opportunity to be heard in the proceedings. *Mullane v. Central Hanover Bank & Trust*, 339 U.S. 306,
12 314 (1950). Proper notice must provide CMs with sufficient information to make an informed decision
13 to accept or object to the settlement. *Id.* at 314; *see also Wershba*, 91 Cal. App. 4th at 251-52. In this
14 case, the proposed Notice meets these standards because it provides all the information a reasonable
15 person would need to make a fully informed decision about the settlement. The proposed Notice informs
16 CMs of (1) the material terms of the settlement, (2) the proposed fees and costs of Class Counsel and for
17 settlement administration, (3) the proposed service award to the Named Plaintiffs; (4) how CMs may opt
18 out of, or object to, the Settlement; (5) each CM's proposed allocation; (6) details about the court hearing
19 on settlement final approval, and (7) how CMs can obtain additional information. *See* Cal. Rules of
20 Court, Rule 3.766 and Exhibit A to the SA. Therefore, the Court should approve the Notice.

21 **D. The Service Awards to the Class Representatives are Reasonable**

22 Plaintiffs will request a Service Award of \$5,000 for Plaintiffs Delfin, Crichton, and Tomaka, and
23 \$2,500 for Plaintiff Maxwell, to recognize their time and effort expended on behalf of the Class, including
24 meeting with Class Counsel, accepting the financial risk in pursuing this litigation, and the general release
25 they are each giving Defendant. Hammond Decl. ¶ 84. This litigation would not have been possible
26 without Plaintiffs coming forward to act as class representatives in this case. The requested Awards falls
27 well within the range of incentive payments typically awarded to class representatives in similar class
28 actions. *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming incentive
awards of \$10,000).

E. The Cy Pres Designee is Appropriate

The Settlement designates California Court-Appointed Special Advocates for Children ("CASA")

1 as the *cy pres* beneficiary. SA § 14.2. CASA is a “child advocacy program” under Code of Civil
2 Procedure § 382 and provides training to volunteers who advocate for foster children in court and in the
3 community. Hammond Decl. ¶ 85. In compliance with Code of Civil Procedure § 382.4, Class Counsel
4 certifies that they have no connection to or relationship with California Court-Appointed Special
5 Advocates for Children that could reasonably create the appearance of impropriety as between the
6 selection of the recipient of the money or thing of value and the interests of the class. Hammond Decl. ¶
86; Ackermann Decl. ¶ 18; Melmed Decl. ¶ 13.

7 **F. The Requested Attorneys’ Fees and Costs Are Reasonable**

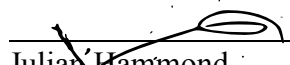
8 In addition, Plaintiffs’ Counsel will request attorneys’ fees of not more than \$237,167 (1/3 the
9 Gross Settlement Amount). SA § 6; Hammond Decl. ¶ 80. This fee amount is fair, reasonable and
10 represents the one-third typically approved in class actions by California courts. *See, e.g., Laffitte v.*
11 *Robert Half Internat’l Inc.*, 1 Cal. 5th 480, 487, 596 (2016) (affirming a fee award representing 33% of
12 the fund).⁹ Plaintiffs will also request reimbursement for out-of-pocket litigation costs incurred by Class
13 Counsel up to \$20,000. SA § 6. Plaintiffs are entitled to recover litigation costs and expenses reasonably
14 incurred in the prosecution of his wage-and-hour claims. *See* Labor Code §§ 1194.2, 226(e), 2699. If
15 the Court grants preliminary approval and authorizes the dissemination of notice of the settlement to the
16 class, Class Counsel anticipates filing a Motion for Attorneys’ Fees and Costs that will be scheduled to
be heard following the notice process. Hammond Decl. ¶ 83.

17 **VI. CONCLUSION**

18 In summary, the settlement provides substantial relief for the Class and is clearly within the range
19 of acceptable settlements. Accordingly, Plaintiffs respectfully request that the Court preliminarily
20 approve the settlement and the proposed Class Notice, and schedule a final approval hearing.

21 DATED: May 25, 2021

Respectfully submitted,

22
23 
24 Julian Hammond
HammondLaw. P.C.
Attorneys for Plaintiffs and the Putative Class

25
26 ⁹ The Court need not decide now the amount of attorneys’ fees and expenses or service awards to award.
27 Rather, at the current preliminary approval stage, the Court need only satisfy itself that the overall
28 settlement is within a range that could warrant final approval. That standard is met here.