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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

GERALD WHILTON OLIVAS, an individual,
on behalf of the State of California, as a
private attorney general,

PLAINTIFF,

v.

THE UNIVERSITY OF PHOENIX, INC.; and
DOES 1 thru 50, inclusive,

DEFENDANTS.

Case No. RG21091953

[Case Assigned for All Purposes to Hon. Frank
Roesch in Dept. 17]

**NOTICE OF MOTION AND MOTION
FOR APPROVAL OF
REPRESENTATIVE ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

*[Filed concurrently with Declarations of
Kelsey M. Szamet, Brian Dixon, Lisa Mullins
of ILYM Group, Inc., and Plaintiff Gerald
Whilton Olivas, in Support of Plaintiff's
Motion for Approval of Representative Action
Settlement; [Proposed] Order, and Judgment]*

Date: May 9, 2024

Time: 3:30 P.M.

Dept.: 17

Reservation No. 713827794848

Complaint Filed: February 19, 2021

FAC Filed: April 26, 2021

Trial Date: None Set

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on May 9, 2024 at 3:30 P.M. in Department 17 of the
3 above-entitled court, Plaintiff GERALD WHILTON OLIVAS, will move the Court for an Order
4 Granting Approval of Representative Action Settlement.

5 The Motion will be made on the grounds that the proposed Settlement is fair, adequate,
6 reasonable, and in the best interest of Plaintiff, all aggrieved employees, and the Parties.

7 The Motion will be based on this Notice of Motion, the attached Memorandum of Points
8 and Authorities, the Declaration of Kelsey M. Szamet the Private Attorneys General Act
9 Settlement Agreement and Release (Exhibit "1" to the concurrently filed Szamet Declaration), all
10 other papers and records on file in this action, and on such oral and documentary evidence as may
11 be presented at the hearing on this Motion.

12
13 DATED: April 12, 2024

KINGSLEY & KINGSLEY, APC

14
15 By: 

16 Kelsey M. Szamet
17 Attorneys for Plaintiff GERALD WHILTON
18 OLIVAS, and all aggrieved employees
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff GERALD WHILTON OLIVAS, (“Plaintiff”) submits this Memorandum of Points
4 and Authorities in support of Motion for Approval of Representative Action Settlement. Plaintiff
5 and Defendant THE UNIVERSITY OF PHOENIX, INC. (“Defendant”) (collectively, the
6 “Parties”) have reached a proposed settlement as stated in the Private Attorneys General Act
7 Settlement Agreement and Release (“Settlement” or “Settlement Agreement”), attached to the
8 concurrently-filed declaration of Kelsey M. Szamet.¹

9 This is a representative action settlement under the Private Attorneys General Act of
10 2004, Labor Code §2699, et seq. (“PAGA”) for Defendant’s alleged failure to reimburse
11 expenses for the period from October 7, 2019, through May 14, 2022. The Total Monetary
12 Settlement Amount is \$700,000. After deduction of attorney’s fees and litigation expenses, a
13 litigation enhancement to Plaintiff, and settlement administration costs as discussed in the
14 Settlement Agreement, the anticipated remaining amount to be divided between the Labor and
15 Workforce Development Agency (“LWDA”) and the aggrieved employees as required by Labor
16 Code section 2699(i) is \$386,666.67 with 75% going to the LWDA (\$290,000.00) and 25%
17 (\$96,666.67) to be distributed to aggrieved employees.²

18 Plaintiff requests that, as required by statute, the Court “review and approve any settlement
19 of any civil action filed pursuant to this part” of PAGA (*See* Lab. Code § 2699(1)(2).) If the Court
20 deems the Settlement fair and acceptable, Plaintiff requests that the Court: (1) enter an order
21 approving the Settlement and ordering the Parties to carry the terms of the Settlement Agreement;
22 and (2) and enter a Final Judgement thereon.³

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24
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26 ¹ The Parties also entered into a separate confidential settlement for Plaintiff’s individual Labor Code claims.

27 ² Pursuant to PAGA, civil penalties recovered by aggrieved employees shall be distributed 75 percent to the
28 Labor and Workforce Development Agency (“LWDA”) and 25 percent to the aggrieved employee(s). Lab.
Code § 2699(i).

³ Plaintiff’s Motion for Approval of Representative Action Settlement will be concurrently uploaded to the
LWDA’s website on the date this Motion is filed. Proof of submission of Plaintiff’s Motion for Approval of
Representative Action Settlement, all related documents, and copy of the email from the LWDA confirming
receipt can be provided to the Court upon request. (Szamet Decl. ¶118.)

II. BACKGROUND OF THE CASE AND RELEVANT PROCEDURAL HISTORY

A. The Circumstances at Issue

Defendant provides higher education including, but not limited to, Associate, Bachelor's, Master's, and Doctoral degrees largely in an online setting. Plaintiff Dr. Gerald Olivas was a part-time "remote" adjunct professor who worked for Defendant from approximately 2000 to 2020. Declaration of Kelsey M. Szamet ¶5.) ("Szamet Decl.")

1. Plaintiff's Contentions

Plaintiff worked from his home to teach courses to students of Defendant. Declaration of Gerald Olivas ¶2) ("Olivas Decl."); Declaration of Brian Dixon ¶1.) ("Dixon Decl.") Plaintiff used his personal computer and internet service to teach the courses. (Olivas Decl. ¶2; Dixon Decl. ¶1.) Plaintiff contended that he had to use additional personal facilities to perform his work, such as a cell phone and personal memory storage device as detailed in his declaration. (Olivas Decl. ¶2; Dixon Decl. ¶1.) At a bare minimum, Plaintiff contends that Defendant acknowledges that Plaintiff needed a personal computer and internet connection to teach courses. (Szamet Decl. ¶6.)

2. Defendant's Contentions

Defendant denies that any other personal facilities were needed because it provided a comprehensive suite of teaching software and other applications such as a web-based telephone application and web-based cloud storage for documents. (Dixon Decl. ¶1.)

Plaintiff's claims regarding other employees during the period prior to the COVID pandemic cover multiple groups of employees and essentially two time periods. (Dixon Decl. ¶2.) Prior to the COVID pandemic, "remote" associate faculty – who were part-time employees - taught on line and had access to the resources of campus Faculty Resource Centers. *Id.* "Ground" associate faculty taught on campuses and had immediate access to Resource Centers. *Id.* Full-time staff who worked on campuses had no expenses as they were provided offices, computers, phones and anything else needed to do their jobs. *Id.* Full-time staff who also taught an occasional additional course could do so with the offices, computers, phones and anything else needed to do their jobs provided by the University. *Id.* Some full-time staff were required to work on campus

1 several days a week and could elect to work at home other days. *Id.* The few full-time staff who
2 worked remotely could also use the Resource Centers if they were faculty. *Id.*

3 Defendant temporarily closed its campuses due to COVID on March 16, 2020. (Dixon
4 Decl. ¶3.) Defendant argued that the effect of the closure varied by groups of employees. *Id.* For
5 “remote” associate faculty, the closure of the campuses had relatively little impact. *Id.* For
6 “ground” associate faculty there was a cost and convenience savings in that they no longer had to
7 commute to Defendant’s campuses while the campuses were closed. *Id.* For staff who worked on
8 campuses, there was a cost and convenience savings as they did not have to commute to campuses
9 while the campuses were closed and they were allowed to take their computers and related
10 technical equipment and even chairs to their homes. *Id.* For staff who worked part-time on campus
11 and worked by choice part-time at home, the staff would be able to expand their work from home
12 preference to full-time work from home. *Id.*

13 Defendant began to reimburse employees for their expenses when the campuses closed.
14 (Dixon Decl. ¶4.) The Defendant began to reimburse full-time staff \$11.50 per bi-weekly pay
15 period for expenses effective March 15, 2020. *Id.* The Defendant began to reimburse associate
16 faculty \$10.50 per biweekly pay period per course effective April 5, 2020. *Id.* If an associate
17 faculty member taught two courses, the reimbursement rate would be \$21.00 per pay period. *Id.*
18 Defendant’s reason for the different reimbursement amounts was because staff were given
19 computers to use, had dedicated phone numbers to use to make calls and could order supplies
20 through the Defendant. *Id.*

21 Defendant’s principal contention in regard to defraying expenses prior to the
22 implementation of a formal expense reimbursement policy was that adjunct faculty could use
23 Faculty Resource Centers to perform their work. (Dixon Decl. ¶5.) Faculty Resource Centers
24 were located on Defendant’s 21 campuses throughout the state. *Id.* Faculty Resource Centers
25 provided multiple computers, printers, telephones and other facilities. *Id.* Resource Centers also
26 provided casual chairs and tables for informal meetings. *Id.* Defendant’s statistician showed that
27 most all faculty lived within commute distance of Resource Centers:

28 ///

	Faculty Distance from Campuses						
Distance	01 - 05 miles	6 - 10 miles	11 - 15 miles	16 - 20 miles	21 - 25 miles	26 - 30 miles	Over 30 miles
Percent of Faculty	15.58	26.64	22.01	14.56	6.88	4.4	7.79

(Dixon Decl. ¶5.)

Defendant argued that it was also prepared to show that many employees had offices or workstations on campuses which they could use to perform all their work and voluntarily chose to work at home some days of the week. *Id.*

Defendant implemented a formal monthly expense reimbursement policy when it closed its campuses due to the COVID pandemic. (Dixon Decl. ¶6.) Plaintiff contended that the reimbursement was insufficient. *Id.* Defendant argued that it conducted a survey of computer and telephone use by out-of-state employees and surveyed local market costs before determining the reimbursement rate. *Id.* Defendant further rejoined that the obligation to reimburse any expenses for employees who worked at home was offset by the employees' savings regarding commuting time, commuting cost, savings in regard to not having to dress for work and the convenience and cost of not having to eat meals away from home. *Id.*

B. Litigation Overview and Procedural History

Prior to securing Counsel, on October 6, 2020, Plaintiff Olivas electronically filed a PAGA Claim Notice to the LWDA, via the State of California Labor and Workforce Development Agency/Department of Industrial Relations website (<https://dir.tfaforms.net/308>) and mailed by certified mail, return receipt requested, to Defendant setting forth the specific facts and theories of the violations alleged against Defendant, as prescribed by Labor Code § 2699 *et seq.* (Szamet Decl. ¶7; Olivas Decl. ¶3.) In an abundance of caution, after securing Counsel, on February 18, 2021, Plaintiff Olivas and his Counsel submitted a supplemental PAGA Claim Notice to the LWDA and Defendant (Szamet Decl. ¶8; Olivas Decl. ¶5.)

The next day, on February 19, 2021, Plaintiff filed his Representative Action Complaint against Defendant bearing Case No. RG21091953 ("Action") (Szamet Decl. ¶9; Olivas Decl. ¶6.) He alleged a single cause action for: (1) Penalties Pursuant to Labor Code § 2699, *et seq.* for

violations of Labor Code § 2802. (Szamet Decl. ¶10; Olivas Decl. ¶7.) On April 26, 2021, Plaintiff filed a First Amended Complaint (“FAC”) alleging the same cause of action. (Szamet Decl. ¶11; Olivas Decl. ¶8.)

On June 17, 2021, Defendant filed a Motion to Strike Plaintiff’s PAGA claims based on an argument that Plaintiff’s original October 6, 2019 PAGA notice was defective and cannot serve to start the tolling period for the statute of limitations. (Szamet Decl. ¶12; Olivas Decl. ¶9.) The Court denied Defendant’s motion and found that it adequately put the LWDA and Defendant on notice. (Szamet Decl. ¶13; Olivas Decl. ¶9.)

C. The Discovery Process

After the matter was at issue, the Parties engaged in extensive informal discovery such as documentation of Plaintiff’s claimed expenses (i.e. copies of bills, etc.) and applicable written policies and procedures of Defendant. (Szamet Decl. ¶14; Olivas Decl. ¶10.) On February 3 and February 4, 2022, Plaintiff sat for a videotaped deposition. (Szamet Decl. ¶15; Olivas Decl. ¶12.) In addition, Defendant produced relevant pay period data on February 17, 2022. (Szamet Decl. ¶16.)

D. Mediation

After his deposition and the exchange of meaningful informal discovery, the Parties attended a full day mediation with experienced mediator Tripper Ortman, Esq. on February 22, 2024. (Szamet Decl. ¶17; Olivas Decl. ¶13.) Plaintiff was present for the full day. *Id.* Though the Parties made significant progress, a settlement was not finalized that day. (Szamet Decl. ¶18.) In the following months and years, both with the assistance of the mediator and through significant direct negotiations, the Parties continued their discussions around resolution and now present the proposed Settlement to the Court for approval. *Id.*

Although Defendant denies that it violated any pertinent law, it recognized the risks and attendant costs of litigation, and the Parties were able to reach a tentative settlement subject to finalization of a formal Private Attorneys General Act Settlement Agreement and Release and the approval of the Court. (Szamet Decl. ¶19.) The Parties negotiated the terms and conditions of the Settlement Agreement and now present the Settlement to the Court for Approval. (*Id.*)

///

III. PAGA ACTIONS AND THE REQUIREMENTS

A. The PAGA Statutory Scheme

PAGA creates a means of “deputizing” citizens as private attorney generals to enforce the Labor Code on behalf of the LWDA. *Brown v. Ralphs Grocery Co.* (2011) 197 Cal.App.4th 489, 501, review den. (Oct. 19, 2011, No. S195850), *cert. denied* (Apr. 16, 2012) 132 S.Ct. 1910. A plaintiff may not — and Plaintiff here does not — bring a PAGA claim simply on his or her own behalf as an individual claim, but “as the proxy or agent of the state’s labor law enforcement agencies.” *Id.*, at 986; *see also Reyes v. Macy’s, Inc.* 202 Cal.App.4th 1119, 1123-1124(2011); *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal. 4th 348, 380).

When an aggrieved employee brings a PAGA claim, “the government is always the real party in interest.” *Securitas Sec. Servs. USA, Inc. v. Sup. Ct. of San Diego Cnty.*, 234 Cal.App.4th 1109, 1119 (2015); *Montano v. The Wet Seal Retail, Inc.* 232 Cal.App.4th 1214, 1222 (2015) (“[A] PAGA action is a dispute between an employer and the State agency.”). Accordingly, a plaintiff that brings a PAGA claim represents “the same legal right and interest as state labor law enforcement agencies,” in that the plaintiff is seeking to recover those civil penalties that otherwise would have been assessed and collected by the LWDA. *Arias, supra*, 46 Cal.4th at 986; Lab. Code § 2699 (a) & (f); *Securitas, supra*, 234 Cal.App.4th at 1119; *see also Medina v. Vander Poel* (E.D. Cal. 2015) 523 B.R. 820, 825 (holding “PAGA plaintiffs do not have property rights in their cases.”). This is borne out by the fact that the LWDA receives 75 percent of any civil penalties recovered; thus, recoveries are principally for the state and only secondarily for aggrieved employees. Lab. Code § 2699 (i). Therefore, when a plaintiff brings a PAGA claim, he or she is properly conceived of as a private attorney general prosecuting violations of California’s labor laws on behalf of the state.

An employee may commence a PAGA action by fulfilling the requirements of Cal. Lab. Code § 2699.3 (a)(1), which simply states:

“The aggrieved employee or representative shall give written notice by certified mail to the Labor and Workforce Development Agency and the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.”

1 Lab. Code § 2699.3 (a)(1)

2 As explained above, Plaintiff has complied with the notice requirements and has properly
3 pled a PAGA cause of action. (Ex. 1, § I.)

4 B. The Court Has Discretion When Awarding the Amount of Penalties

5 PAGA provides for penalties in the amount of one hundred dollars (\$100) for each
6 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
7 each aggrieved employee per pay period for each subsequent violation. Lab. Code § 2699(f)(2).

8 “PAGA penalties...are mandatory, not discretionary” and must be awarded upon a showing
9 that Defendant violated the Labor Code.⁴ *Amaral v. Cintas Corp. No. 2 163 Cal. App. 4th 1157,*
10 *1213 (2008); Moreno v. Autozone, Inc. (N.D. Cal. June 5, 2007) No. C05-04432 MJJ, 2007 WL*
11 *1650942, at *3.*

12 However, PAGA specifically provides the Court with discretion when it awards these
13 penalties. Labor Code §2699(e)(2) states that “a court may award a lesser amount than the
14 maximum civil penalty amount specified by this part if, based on the facts and circumstances of
15 the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive,
16 or confiscatory.” (emphasis added). Here, as Defendant denies that it violated any law or that it
17 engaged in any knowing or intentional conduct giving rise to liability, and expressly deny that any
18 employees suffered harm, it would certainly argue that if the Court were to find that any liability
19 existed, the Court should exercise its discretion to significantly reduce or eliminate any civil
20 penalty.

21 In *Fleming v. Covidien Inc. (C.D. Cal., Aug. 12, 2011, No (OPX)), 2011 WL 7563047*, the
22 Court exercised its discretion to reduce the PAGA penalty amount. There, the plaintiff brought a
23 PAGA claim for violations of section 226(a) based on the following issues: (a) the statements did
24 not show either an employee identification number or the last four digits of the social security
25 number of the employee; (b) the statements did not show the beginning date of the pay period for
26 which the employee was paid; (c) the statements identified Covidien as the employee’s employer.
27 (*Id.* At *2). There were approximately 28,000 wage statements at issue. (*Id.* at *3). The *Fleming*

28 ⁴ See also *Willner v. Manpower Inc., supra*. 35 F. Supp. 3d at 1136; *McKenzie v. Federal Exp. Corp, supra*, 765 F.Supp.2d at 1232.

1 court calculated the maximum potential civil penalty exposure at \$2.8 million (\$100 per wage
2 statement). (*Ibid*; see also Labor Code § 2699(f)(2)). After a bench trial, the Court elected to
3 exercise its discretion to reduce the civil penalty per wage statement to \$18 per wage statements,
4 reflecting 18% of the potential exposure. (*Id.* at *4). The Court reasoned:

5 Here, the aggrieved employees suffered no injury due to the erroneous wage
6 statements, and made no complaint of the errors or omissions contained therein
7 prior to filing suit. Also, Defendants were not aware that the wage statements
8 violated the law and took prompt steps to correct all violations once notified. Given
9 these circumstances, the Court finds a \$2.8 million penalty unjust according to §
2699(e)(2). Accordingly, in its discretion, the Court reduces the penalty to
\$500,000.

10 *Id.* at *4. A court exercising its discretion to significantly reduce the civil penalty awarded under
11 PAGA is not a rare occurrence. *See e.g., Carrington v. Starbucks Corp.* (2018) 30 Cal. App. 5th
12 504, 529 (awarding 10% of maximum civil penalty for meal break claims in light of Starbuck’s
13 “good faith attempts” to comply and because the violations were minimal).

14 As explained above, Plaintiff’s counsel anticipated that, at trial, Counsel for Defendant
15 would argue that: (1) no penalties are due employees who could use Faculty Resource Centers to
16 perform their work; (2) other employees were provided offices and facilities or elected to work at
17 home; (3) Defendant maintained a reimbursement policy for much of the liability period and the
18 PAGA Members were properly reimbursed in accordance with Defendant’s lawful policies and
19 practices; and (4) until this Action was filed, no employees had complained about Defendant’s
20 reimbursement policies and practices. (Szamet Decl. ¶20.) All of which, Counsel for Defendant
21 would argue, should mitigate in favor of significantly reducing any civil penalty. (Szamet Decl.
22 ¶21.)

23 After engaging in pertinent informal discovery in this Action, Plaintiff and his Counsel
24 believe that a settlement of \$700,000.00 is reasonable given the risks discussed in detail below.

25 C. There is a Strong Risk that the Civil Penalties will Be Reduced or Eliminated

26 Plaintiff believes that there is a strong risk that the potential penalties will be reduced by
27 the Court.
28

1 In the above circumstances, Defendant contended that there was no reimbursement
2 obligation for employees who had access to Faculty Resource Centers or who voluntarily chose
3 to work from home. There is case authority supporting Defendant’s contention. See, e.g.,
4 *Horowitz v. SkyWest Airlines, Inc.*; Case No. 21-cv-04674-MMC (N.D. Cal. May 22, 2023)
5 (pilots not due smartphone expense reimbursements where schedules could be checked through
6 computers and telephones at terminals); *Novak v. Boeing Company*, Case No. SACV 09-01011-
7 CJC(ANx), 2011 WL 9160940, at *3 (C.D. Cal. July 20, 2011).

8 Plaintiff believes there is a strong risk that the Court will not award the \$200 civil penalty
9 triggered for “subsequent” violations. Labor Code section 2699(f)(2). If this case were to proceed
10 to trial, Plaintiff would argue that a “subsequent” violation simply means that Defendant violated
11 the PAGA statute more than once for a given employee (i.e. for each pay period during the relevant
12 time period). Plaintiff is not aware of case law that specifically interprets “subsequent” in the context
13 of section 2699. However, Defendant is likely to rely on *Amaral v. Cintas Corp. No. 2*, 163 Cal. App.
14 4th 1157 (2008) because it rejected a purely temporal understanding of the term “subsequent” and
15 interpreted its use in Labor Code sections 210 and 225.5 to require that “the employer has been notified
16 that it is violated a Labor Code provision” before higher penalties are triggered. *Id.* at 1209. Defendant
17 presumably will take the position that it has not been notified that it actually violated any provisions
18 of the Labor Code until the Labor Commissioner has issued a formal citation or this Court made a
19 finding that a violation existed. (Szamet Decl. ¶22.)

20 1. Standards for Settlement Approval

21 When approving a settlement of a PAGA action, the statute simply requires the Court to
22 “review and approve any settlement of any civil action filed pursuant to this part.” (Lab. Code §
23 2699(l)(2).) PAGA does not set forth standards for evaluating such settlements, and the California
24 appellate courts have not weighed in on the issue. However, trial courts have approved PAGA
25 settlements where the penalties are “genuine and meaningful” and “consistent with the underlying
26 purpose” of the statute. (See *O’Connor v. Uber Techs., Inc.* (N.D. Cal. 2016) 201 F. Supp. 3d
27 1110, 1113.) Additionally, as explained in *Arias v. Superior Court* (2009) 46 Cal.4th 969, class
28 action procedural rules do not apply in PAGA cases, including the two-step preliminary and final

approval process. Rather, the approval process consists of one step where the court decides if the settlement should go into effect.

IV. THE PROPOSED PAGA SETTLEMENT

Defendant will pay the total sum of \$700,000.00 in full and final settlement of the PAGA claims alleged. (Szamet Decl. ¶23, Exhibit I, §II, ¶A(18).) Per the Settlement Agreement, the amount is allocated as follows:

Total Monetary Settlement Amount:	\$700,000.00
PAGA Counsel Fees:	\$233,333.33
PAGA Counsel Costs:	\$20,000.00 ⁵
Settlement Administrator Costs:	\$10,000.00
Plaintiff's Service Award:	\$50,000.00
Anticipated PAGA Penalties:	\$386,666.67 <i>(\$290,000.00 to the LWDA; \$96,666.67 to remain in the PAGA Settlement Fund)</i>

(Szamet Decl. ¶24, Exhibit 1, §B.)

For settlement purposes, the PAGA Settlement Members are defined as: "all current and former employees of Defendant in the State of California who worked one or more pay periods in whole or in part off site since October 7, 2019, one (1) year prior to the date of Plaintiff's first notice letter to the Labor and Workforce Development Agency ("LWDA") on October 7, 2020, through May 14, 2022." ("PAGA Settlement Member"). (Szamet Decl. ¶25, Exhibit 1, §II, ¶A(7).)

Each aggrieved employee shall receive a pro-rata portion of the remaining amount in PAGA penalties based by dividing the amount of the aggrieved employees' 25% share of PAGA Penalties by the total number of bi-weekly pay periods for all PAGA Settlement Members during the Settlement Period to determine the bi-weekly pay period value. The bi-weekly pay period value will then be multiplied by the number of bi-weekly pay periods worked by each PAGA Settlement Member to

⁵ The Settlement Agreement provided for counsel to receive cost reimbursement of up to \$20,000.00. However, counsel seeks reimbursement of costs of \$16,101.80 as discussed in detail below. (Szamet Decl. ¶24., Ex. §II, ¶B(1).) The difference (delta) will remain in the net settlement fund, causing the net amount for distribution to the LWDA and PAGA Settlement Members to be slightly higher than contemplated in the settlement agreement and distributed accordingly. (Szamet Decl. ¶24, Ex. §II, ¶B(1b).)

determine each PAGA Settlement Member's share of the settlement. (Szamet Decl. ¶26, Exhibit 1, §II, ¶C(13).)

V. ARGUMENT

A. The Court Should Approve the Settlement Agreement

The Parties recognize that in accordance with Labor Code §2699(1), Court approval is required in the event of a settlement of a PAGA action on a representative basis. In order to comply with the requirements of Labor Code §2699, the Parties submit the instant Motion and the Settlement Agreement (Exhibit "1" to the Szamet Declaration) for Court approval.

B. The Risks of Moving Forward with Plaintiff's PAGA Claim

To help the Court evaluate the fairness of the Settlement, a discussion of the risk evaluation and discount taken follows. (Szamet Decl. ¶27.) Plaintiff believed that Defendant may persuasively argue that the Court should exercise its discretion under PAGA to significantly reduce or altogether waive any penalties under PAGA. (Szamet Decl. ¶28.) Pursuant to Labor Code §226.3, the Labor Commissioner has the discretion to "decide not to penalize an employer for a first violation when that violation was due to a clerical error or inadvertent mistake." (Szamet Decl. ¶29.) And, the court in a PAGA action has the same discretion "to assess a civil penalty" that the Labor Commissioner would have, as well as complete discretion to "award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." (Labor Code § 2699(e)(1) and (e)(2)). (Szamet Decl. ¶30.)

Plaintiff's Counsel anticipated that, at trial, Counsel for Defendant could make a potentially persuasive argument that Defendant: (1) provided Faculty Resource Centers which alleviated any obligation to provide an expense reimbursement; (2) other employees were provided offices and facilities or elected to work at home; (3) the PAGA Settlement Members were properly paid and/or reimbursed in accordance with Defendant's lawful reimbursement policies and practices, and that any alleged failure to compensate the PAGA Settlement Members was the result of inadvertence and clerical error; (4) until this Action was filed, no employees had complained about any alleged failure to reimburse business expenses; (5) and none of Defendant's employees suffered any harm from or

1 actual damage as a result of the conduct that forms the basis for Plaintiff's allegations. (Szamet Decl.
2 ¶31.) All of which, Counsel for Defendant would argue, should mitigate in factor of significantly
3 reducing or waiving any PAGA penalties. (*Id.*) While Plaintiff disagrees that this analysis is legal
4 correct or persuasive, PAGA Counsel had to consider the foregoing facts and arguments and how
5 they might impact any judgment ultimately awarded to PAGA Settlement Members if the Court were
6 persuaded by them. (Szamet Decl. ¶32.)

7 **1. The Risks Associated with the Reimbursement Claim**

8 Labor Code § 2802 provides that (a) An employer shall indemnify his or her employee for
9 all necessary expenditures or losses incurred by the employee in direct consequence of the
10 discharge of his or her duties, or of his or her obedience to the directions of the employer, even
11 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
12 unlawful.

13 Plaintiff alleged that Defendant failed to reimburse Plaintiff and all Aggrieved Employees
14 for necessary expenses incurred to perform online, remote work during the period of October 6,
15 2019 (one year prior to the date of his PAGA Letter) to May 14, 2022. (Szamet Decl. ¶33.) This
16 includes expenses for: internet connection services; modem; router; computer; printer and ink;
17 computer support service agreement; operating system and application software; software virus
18 protection; mobile phone (for Defendant's University of Phoenix app and use of University of
19 Phoenix email); cellular data service; and home office expenses for chair, desk, file cabinet,
20 supplies, utilities, insurance, and miscellaneous office expenses such as paper) without
21 reimbursement in violation of Labor Code § 2802. (Szamet Decl. ¶34.)

22 Plaintiff contends that from October 6, 2019, to April 25, 2020, Defendant failed to
23 maintain an expense reimbursement policy concerning the Aggrieved Employees. (Szamet Decl.
24 ¶35.) As stated above, Defendant contends it was not necessary to provide an expense
25 reimbursement given employees access to Faculty Resource Centers, given that some employees
26 worked on campuses and some worked voluntarily at home. (Dixon Decl. ¶5.)

27 Plaintiff contends that the expenses reimbursement policy which Defendant implemented
28 on April 25, 2020 was insufficient to defray the aggrieved employees expenses from that date to

1 the end of the PAGA period on to the end on May 14, 2022. (Szamet Decl. ¶36.) Defendant
2 contends that it investigated the expenses incurred by employees and market conditions before
3 setting the reimbursement. (Szamet Decl. ¶37; Dixon Decl. ¶6.) Defendant also contends that the
4 reimbursement was appropriate given the low-hours, part-time status of most of the potentially
5 aggrieved employees. (Szamet Decl. ¶38.)

6 The main risk here is the factual dispute at hand. (Szamet Decl. ¶39.) There are two
7 distinct time periods to consider. (Szamet Decl. ¶40.) For the October 6, 2019 to April 25, 2020
8 period, Defendant argued that it did not require Aggrieved Employees to use personal computers,
9 cellphones, or any at home internet necessities because it provided physical working space for
10 teachers at its campuses. (Szamet Decl. ¶41.) It argued that any Aggrieved Employee was able to
11 travel to a campus and use phones, computers, Wi-Fi, etc. anything necessary to teach a class
12 readily available. (Szamet Decl. ¶42.) Thus, Defendant argued that there was no need for any
13 Aggrieved Employee to use personal laptops, cellphones or at home Wi-fi support. (Szamet Decl.
14 ¶43.) It argued that if Aggrieved Employees chose to use such equipment, it was a personal choice
15 that allowed them to work remotely, but it was not a business “necessity”. (Szamet Decl. ¶44.) If
16 Defendant were able to establish such, there could be no recovery at all for this claim. (Szamet
17 Decl. ¶45.) Nonetheless, Plaintiff believed this was a strong claim strengthened by the fact
18 Defendant later instituted a reimbursement policy. (Szamet Decl. ¶46.) However, in coming to
19 the proposed Settlement, Plaintiff had to consider that a Court, were it to find that liability existed
20 for this time period, may not award the full penalty exposure because Defendant could show that
21 it did make the necessary teaching tools available on its campuses. (Szamet Decl. ¶47.)

22 As for the second time period of from April 26, 2020 to May 14, 2022 (end date of the
23 PAGA Period), Plaintiff believed there is far greater risk. (Szamet Decl. ¶48.) Defendant
24 instituted a written reimbursement policy and reimbursed Plaintiff and other Aggrieved Employees
25 on a per pay period basis. (Szamet Decl. ¶49.) If the Court were to find that the amount Defendant
26 reimbursed was adequate, it may exercise its discretion to determine that no violation of the Labor
27 Code existed. (Szamet Decl. ¶50.) If other the hand, the Court did find Defendant was liable, it
28

1 may exercise its discretion to award a civil penalty of mere pennies per pay period in light of the
2 fact that there was a reimbursement amount paid. (Szamet Decl. ¶51.)

3 Based on these risks, Plaintiff determined that discounting this claim for settlement
4 purposes was fair and reasonable. (Szamet Decl. ¶52.)

5 C. Based on the Risks Above and the Analysis of the Maximum Penalties Available,
6 Plaintiff Believes this Settlement is Fair and Reasonable

7 There are 46,188 pay periods at issue in this matter and 1,550 Aggrieved Employees.
8 (Szamet Decl. ¶53; Ex. 1, ¶C.16.)

9 Based on these figures, the maximum potential exposure for the PAGA claims for the
10 PAGA Settlement Members is \$4,618,800 (46,188 pay periods at issue multiplied by \$100 a pay
11 period). In light of the immense judicial discretion available, Plaintiff believes the Settlement is
12 reasonable. Indeed, if this Court were to ultimately award \$18 per pay period as the trial court did
13 in *Fleming v. Covidien Inc., supra*, the present Settlement is well within that range at \$15.15 per
14 pay period (for comparison the \$18/pay period in *Fleming* would be \$831,384 here as 46,188 pay
15 periods x \$18 = \$831,384). Were the Court to award 10% of maximum civil penalty as occurred
16 in *Carrington, supra*, 30 Cal. App. 5th 504, the result here would be \$461,880.

17 Because this Settlement is well-within the range of other judicial penalty awards, Plaintiff
18 believes this Settlement for \$700,000.00 is a very fair and reasonable settlement.

19 **VI. THE REQUEST FOR ATTORNEYS' FEES AND COSTS**

20 As detailed fully in the Settlement, the settlement provides for Defendant to create a Total
21 Monetary Settlement Amount of \$700,000.00. (Szamet Decl. ¶54; Ex. 1 at §II, ¶A(18).) From that
22 fund, Plaintiff requests an award of attorneys' fees for Plaintiff's Counsel in the amount of
23 \$233,333.33, or 33.33% of the Total Monetary Settlement Amount, and up to \$20,000.00 in
24 reimbursement for litigation costs. (*Id.*; Ex. 1 at §II, ¶B(1).)⁶

25 A. Plaintiff's Counsel are Entitled to a Fee from the Common Fund

26 On August 11, 2016, the California Supreme Court decided *Laffitte v. Robert Half*
27 *International*, which addressed the correct methodology for awarding fees in a class action

28 ⁶ Plaintiff's Counsel has decades of experience prosecuting class and representative action litigation. (Szamet Decl. ¶57-60).

1 settlement. (*Laffitte v. Robert Half Intern. Inc.* (Cal. 2016) 205 Cal.Rptr.3d 555, 573.) The *Laffitte*
2 Court approved awarding fees as a percentage of the settlement fund in cases like the present one,
3 where a settlement results in the creation of a common fund on behalf of a class:

4 We join the overwhelming majority of federal and state courts in
5 holding that when class action litigation establishes a monetary fund
6 for the benefit of the class members, and the trial court in its
7 equitable powers awards Class Counsel a fee out of that fund, the
8 court may determine the amount of a reasonable fee by choosing an
9 appropriate percentage of the fund created.

10 (*Id.* at 573.) The Court then set out several reasons why the percentage-of-the-fund method is
11 preferred over the alternative lodestar-multiplier approach in California courts:

12 The recognized advantages of the percentage method—including relative ease of
13 calculation, alignment of incentives between counsel and the class, a better
14 approximation of market conditions in a contingency case, and the encouragement
15 it provides counsel to seek an early settlement and avoid unnecessarily prolonging
16 the litigation [citations]—convince us the percentage method is a valuable tool that
17 should not be denied our trial courts.

18 (*Id.* at 573.)

19 An award of 33.33% of the common fund is appropriate here under the “substantial benefit”
20 theory. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1810; *Wershba v. Apple Computer,*
21 *Inc.* (2001) 91 Cal.App.4th 224, 254.) That theory permits a litigant who has sued in a
22 representative capacity to recover fees when the litigant’s efforts have created a substantial, actual,
23 and concrete benefit for members of an ascertainable class and the court’s jurisdiction over the
24 subject matter makes possible an award which spreads the cost proportionately among the
25 members of the benefitted class. (*See Ciani v. San Diego Trust & Sav. Bank* (1994) 25 Cal.App.4th
26 563, 578.)

27 This doctrine rests on the understanding that attorneys should normally be paid by their
28 clients, and that unless attorneys’ fees are paid out of the common fund, those who benefitted from
the fund would be unjustly enriched. (*Woodland Hills Residents Assn., Inc. v. City Council* (1979)
23 Cal.3d 917, 943; *Save El Toro Ass’n v. Days* (1979) 98 Cal.App.3d 544, 548-49.) To prevent
this unfair result, courts exercise their inherent equitable powers to assess attorneys’ fees against
the entire fund, thereby spreading the cost of those fees among all those who benefitted. (*Serrano*

1 *III*, 20 Cal.3d at p. 35.) “A court, in the exercise of its equitable discretion, may decree that those
2 receiving the benefit should contribute to the costs of its production.” (*Save El Toro Assn., supra*,
3 98 Cal.App.3d at 548.) As this approach “better approximates the workings of the marketplace
4 than the lodestar approach,” there is “a greater judicial willingness to evaluate a fee award as a
5 percentage of the recovery” in common fund cases. (*Lealao v. Beneficial Calif., Inc.* (2000) 82
6 Cal.App.4th 19, 31, 48.)

7 B. The Attorneys’ Fees Requested Are Well Within the Range of Fees in Comparable
8 Cases

9 Courts historically award fees in the twenty-to-fifty percent range, depending on the
10 circumstances of the case. As stated in Newberg:

11 No general rule can be articulated on what is a reasonable percentage
12 of a common fund. Usually 50% of the fund is the upper limit on a
13 reasonable fee award from a common fund in order to assure that
14 the fees do not consume a disproportionate part of the recovery
obtained for the Class, although somewhat larger percentages are
not unprecedented.

15 (Newberg on Class Actions, 3rd Ed., 1992, § 14.03; and see *Chavez v. Netflix, Inc.* (2008) 162
16 Cal.App.4th 43, 66, fn 11 [“Empirical studies show that, regardless whether the percentage method
17 or the lodestar method is used, fee awards in class actions average around one-third of the
18 recovery.”].) Thus, Plaintiff’s Counsel’s requested fee of 33.33% is not only well within the range
19 of reasonableness, but lower than the average fee award of 35% and is fair compensation for
20 undertaking this complex, risky, expensive, and time-consuming litigation on a contingent basis.

21 C. Plaintiff’s Counsel’s Fee Request is Reasonable Under a Lodestar Crosscheck

22 Courts may “cross-check” the results of the common fund method against the lodestar
23 method. (See *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.) The lodestar is
24 calculated by multiplying the reasonable hours expended by a reasonable hourly rate. (*Serrano v.*
25 *Priest*, 20 Cal.3d 25, 48-49 (1977) (“*Serrano III*”).) Those rates reflect “the general local hourly
26 rate for a fee-bearing case” and do “not include any compensation for contingent risk,
27 extraordinary skill, or any other factors.” (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138.) The
28 court may then enhance the lodestar with a multiplier. (*Wershba, supra*, 91 Cal.App.4th at 254;

1 *Serrano III, supra*, 20 Cal.3d at 49.)

2 i. Requested Multiplier

3 The purpose of using the lodestar/multiplier method is to mirror the legal marketplace.
4 Counsel will not handle cases for straight hourly fees payable only if they win; therefore, an
5 enhancement is often awarded so that the fee received is commensurate with what attorneys could
6 expect to be compensated for services in similar circumstances. (*See Tulare Valley Audubon Soc.,*
7 *Inc. v. County of Tulare* (1984) 155 Cal.App.3d 738, 755 [an award must be large enough “to
8 entice competent counsel to undertake difficult public interest cases”].) No specific findings
9 reflecting the court’s calculations are required. (*Wershba, supra*, 91 Cal.App.4th at 254; *Rebney,*
10 *supra*, 232 Cal.App.3d at p. 1349.) “The record need only show that the attorney fees were awarded
11 according to the ‘lodestar’ or ‘touchstone’ approach.” (*Ibid.*)

12 Here, a lodestar cross-check confirms that the percentage requested is reasonable. (Szamet
13 Decl. ¶63.) Plaintiff’s Counsel have an aggregate lodestar in the amount of \$179,990.00 which
14 represents 229.60 hours of attorney work on this litigation from its inception through the date of
15 this filing of Plaintiff’s instant Motion (without future hours). (*Id.*) As such, Plaintiff’s Counsel is
16 asking for a modest lodestar multiplier of 1.30. (Szamet Decl. ¶64.) Typically, the lodestar is
17 merely the starting point of the calculation of a reasonable fee, and courts often multiply the
18 lodestar by a factor to account for the risk of non-payment, delay in payment, the quality of work,
19 and the novelty and difficulty of the issues involved. (*See Radar v. Thrasher*, (1962) 57 Cal.2d 244,
20 253; *Beasley v. Wells Fargo Bank*, (1991) 235 Cal.App.3d 1407, 1419; *Coal. for L.A. County*
21 *Planning v. Bd. of Supervisors*, (1997) 76 Cal.App.3d 24 1, 251.)

22 This case dealt with difficult legal and factual questions. (Szamet Decl. ¶65.) Significantly,
23 the risk attendant to the underlying claims in this matter was great considering Defendant’s
24 defenses as discussed in detail above. (*Ibid.*) Were this case to proceed, Defendant would have a
25 strong incentive to litigate tenaciously. (*Ibid.*) There are genuine issues in dispute. (*Ibid.*)
26 Furthermore, Plaintiff’s Counsel was able to obtain close to the full value for this case. (Szamet
27 Decl. ¶66.)

28 As discussed above, Plaintiff’s Counsel are very experienced and skilled wage and hour

1 practitioners with decades of experience who diligently prepared and litigated this matter. (Szamet
2 Decl. ¶67.) To achieve the ultimate result in this case, Plaintiff's counsel had to incur substantial
3 risk and expense, and were precluded from taking other fee generating employment for 46 hours
4 of attorney time. (Szamet Decl. ¶68.) This matter had been handled purely on a contingency fee
5 basis and Plaintiff's counsel has advanced many thousands of dollars in costs while deferring all
6 payment of fees, with no guarantee that any of the fees incurred or costs advanced would ever be
7 recovered and diverting significant firm resources to prosecution of this matter. (Szamet Decl.
8 ¶69.) Plaintiff's Counsel believe this is an exceptional result that has been well received by the
9 PAGA Settlement Members. (Szamet Decl. ¶70.)

10 **VII. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF** 11 **COSTS**

12 In addition to their request for fees, Plaintiff's Counsel further request reimbursement of
13 the reasonable out-of-pocket expenses advanced and/or incurred by them in connection with this
14 litigation, in the amount of \$16,101.80. (Szamet Decl. ¶91.) To date, Plaintiff's Counsel has
15 incurred \$15,501.00 in costs and anticipates incurring an additional \$600.00 in costs to file and
16 serve this motion. (Szamet Decl. ¶92.) Because the Settlement provides for a reimbursement of
17 litigation costs of up to \$20,000, the delta shall be deemed a PAGA Penalty and distributed
18 accordingly per the Agreement,. (Szamet Decl. ¶93.) As such, counsel is requesting a cost
19 reimbursement of \$16,101.80. (Szamet Decl. ¶94.)

20 All of the requested costs are reasonable in amount and were necessarily incurred by
21 Plaintiff's Counsel in prosecuting this litigation. (Szamet Decl. ¶95.); Exhibit 2 [Cost Report].)
22 Expenses in this matter to date include costs for filing fees, legal research, mediation, and
23 additional hard costs for the prosecution of this case evidenced in the costs spreadsheet attached
24 to the Declaration of Kelsey M. Szamet All of these costs have been incurred in the course of this
25 litigation, and all costs advanced have already been paid by Plaintiff's Counsel with the exception
26 of the anticipated cost of filing the present motion. (Szamet Decl. ¶96.) Accordingly, the requested
27 reimbursement of the reasonable out-of-pocket expenses advanced and/or incurred is appropriate
28 and justified as part of the overall settlement and the Court should approve the request for

1 reimbursement in the amount of \$16,101.80. (Szamet Decl. ¶97.)

2 **VIII. ENHANCEMENT TO PLAINTIFF**

3 The Settlement calls for a significant enhancement payment of \$50,000.00 to the named
4 Plaintiff, to be paid from the Total Monetary Settlement Amount. (Szamet Decl. ¶98; Ex. 1 II,
5 ¶B(1c); Olivas ¶17.) Incentive awards “are intended to compensate class representatives for work
6 done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the
7 action, and sometimes, to recognize their willingness to act as a private attorney general.”
8 (*Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958-59. “[I]t is established that
9 named plaintiffs are eligible for reasonable incentive payments to compensate them for the expense
10 or risk they have incurred in conferring a benefit on other members of the class.” (*Munoz v. BCI*
11 *Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412 (citing *Clark v. American*
12 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 805-806; *Staton v. Boeing Co.* (9th
13 Cir.2003) 327 F.3d 938, 977)).

14 The enhancement request takes into consideration the time, effort, and expense incurred by
15 Plaintiff in coming forward to litigate this matter on behalf of the PAGA Settlement Members.
16 The time spent by Plaintiff goes above and beyond in this matter. (Szamet Decl. ¶99; *see generally*
17 Olivas Decl.) First and foremost, Plaintiff took the necessary steps to initiate this action on his
18 own in October 2020. (Szamet Decl. ¶100.) As a non-lawyer, without the assistance of
19 experienced counsel, he drafted and properly uploaded a PAGA notice letter to the LWDA.
20 (Szamet Decl. ¶101.) When attacked by way of a Motion to Strike, the Court found this letter to
21 be sufficient to put Defendant and the LWDA o notice of Plaintiff’s and the Aggrieved Employees’
22 claims. (Szamet Decl. ¶102.) This is a very notable accomplishment. (Szamet Decl. ¶103.) It
23 was only after extensively researching experience counsel, that a second supplemental notice letter
24 was sent in an abundance of caution by Plaintiff Counsel’s law firm. (Szamet Decl. ¶104.) Due
25 to his own work, Plaintiff Olivas started the clock on statute of limitations five months before any
26 Counsel was involved. (*Id.*) Of particular note, these five months fall within the time period that
27 Defendant did not maintain a reimbursement policy at all so it is, arguably, the strongest time
28 period in the case when analyzing liability. (Szamet Decl. ¶105.) Without researching, drafting,

1 and filing a notice letter on his own, this five-month time period would not have been recoverable
2 by the LWDA and Aggrieved Employees at all. (Szamet Decl. ¶106.)

3 Second, Plaintiff has been tireless in his advocacy and determination to see this matter
4 through. (Szamet Decl. ¶107; *see generally* Olivas Decl.) He compiled hundreds of pages of bills
5 to substantiate his claimed expenses, sat for 2 full days of deposition, and attended a full day
6 mediation. (Szamet Decl. ¶108; *Id.*) Thereafter, for months and years, he stayed in regular and
7 consistent contact with Counsel to see this proposed Settlement through. (Szamet Decl. ¶109; *Id.*)
8 He has spent hours upon hours researching the Labor Code, PAGA claims generally, PAGA
9 verdicts, and trial court orders from this Court. (Szamet Decl. ¶110; *Id.*) He has researched the
10 online university education space exhaustively to understand industry norms and customs.
11 (Szamet Decl. ¶111; *Id.*) In short, his investment in and time commitment to this matter have truly
12 gone above and beyond. (Szamet Decl. ¶112.)

13 In addition to the specific work explained above and in his declaration, Plaintiff has
14 actively engaged in all aspects of this case and acted as a very competent representative including:
15 providing information to his Counsel regarding Plaintiff's relevant employment experiences and
16 the experiences of others he observed around him, compiling hundreds of pages of documents to
17 support the claim, meeting with Plaintiff's Counsel on a consistent and frequent basis to discuss
18 the status of the case and the theories of liability, preparing and reviewing documents for his
19 deposition, preparing and reviewing documents for mediation and participating very meaningfully
20 that day, reviewing and revising settlement documents, and making himself available to Counsel
21 to participate at all times. (Szamet Decl. ¶113.)

22 Plaintiff's Counsel acknowledges this amount may be higher than litigation enhancements
23 ordinarily requested, but considers this to be a fair and reasonable enhancement in this particular
24 situation. (Szamet Decl. ¶114.) The enhancement takes into consideration the very significant
25 amount of time and effort incurred by Plaintiff in coming forward to litigate this matter on behalf
26 of the PAGA Settlement Members and the attendant risks. (Szamet Decl. ¶115.) Accordingly,
27 Plaintiff should be awarded the agreed-upon enhancement of \$50,000.00.

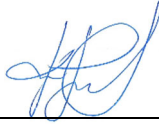
28 ///

1 **IX. CONCLUSION**

2 Plaintiff and Plaintiff's Counsel submit that the proposed Settlement as documented in the
3 Settlement Agreement is fair, adequate, reasonable, and in the best interest of the Parties and the
4 State of California. Plaintiff respectfully requests that the Court approve the Settlement and Order
5 that the Settlement is carried out according to the terms of the Settlement Agreement.

6
7 DATED: April 12, 2024

KINGSLEY & KINGSLEY, APC

8
9 By: 

Kelsey M. Szamet
Attorneys for Plaintiff GERALD WHILTON
OLIVAS, and all aggrieved employees

(PROOF OF SERVICE)
[CCP 1013(a)(3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On April 12, 2024, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR APPROVAL OF REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

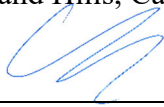
R. Brian Dixon
bdixon@littler.com
Kurt R. Bockes
kbockes@littler.com
Littler Mendelson, P.C.
333 Bush Street, 34th Floor
San Francisco, CA 94104

[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] (BY ELECTRONIC MAIL TRANSMISSION): I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the above email address(es).

[XX] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 12, 2024, at Woodland Hills, California



Michelle Tanzer



Superior Court of Alameda County Public Portal

Make a Reservation

Olivas VS The University of Phoenix, Inc.

Case Number: RG21091953 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2021-02-19 Location: Rene C. Davidson Courthouse - Department 17

Reservation

Case Name: Olivas VS The University of Phoenix, Inc.	Case Number: RG21091953
Type: Motion re: (Motion for Approval of Representative Action Settlement)	Status: RESERVED
Filing Party: Gerald Whilton Olivas (Plaintiff)	Location: Rene C. Davidson Courthouse - Department 17
Date/Time: 05/09/2024 3:30 PM	Number of Motions: 1
Reservation ID: 713827794848	Confirmation Code: CR-A8IRVTGZJK4ZGHXVY

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	0.00	1	0.00
Court Technology Fee	1.00	1	1.00
TOTAL			\$1.00

Payment

Amount: \$1.00	Type: MasterCard
Account Number: XXXX4583	Authorization: 32703Z
Payment Date: n/a	

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