

1 JULIAN HAMMOND (SBN 268489)
jhammond@hammondlawpc.com
2 POLINA BRANDLER (SBN 269086)
pbrandler@hammondlawpc.com
3 ARI CHERNIAK (SBN 290071)
acherniak@hammondlawpc.com
4 HAMMONDLAW, P.C.
1201 Pacific Ave., 6th Floor
5 Tacoma, WA 98402
Tel. (310) 601-6766
6 Fax: (310) 295-2385

7 WILLIAM C. JHAVERI-WEEKS (SBN 289984)
wjw@jhaveriweeks.com
8 ALLY N. GIROUARD (SBN 336625)
ag@jhaveriweeks.com
9 THE JHAVERI-WEEKS FIRM, P.C.
351 California Street, Suite 700
10 San Francisco, CA 94104
Tel.: (415) 463-8097
11 Fax: (415) 367-1439

12 *Attorneys for Plaintiff and the Class*

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF CONTRA COSTA**

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

18 Plaintiff,

19 v.

20 **NATIONAL UNIVERSITY**, a California Non-
21 Profit Corporation,

22 Defendant.
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FILED
AUG 26 2022

K. BIEKER, CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA
By: C. F. Teng, Deputy Clerk

Case No. MSC21-00939

**[PROPOSED] FINAL APPROVAL ORDER
AND JUDGMENT**

Date: August 26, 2022

Time: 9:00 a.m.

Dept.: 7

Hon. Barry Baskin

1 This matter is before the Court on Plaintiff's unopposed Motion for Final Approval of Class
2 Action Settlement and Motion for Approval of Attorneys' Fees and Costs, and Service Award for Class
3 Representative (together, the "Motions"), based on a Settlement Agreement in the above-titled case,
4 which is attached hereto as **Exhibit 1**.

5 The Court, having fully reviewed and considered the papers filed herein, and having considered
6 all arguments offered regarding the Motions before this Court, rules as follows:

7 1. The Settlement Agreement is fully and finally approved as fair, reasonable, and
8 adequate, and is hereby incorporated by reference. Unless otherwise specified herein, for purposes
9 of this Final Approval Order, the terms used in this Order have the same meanings assigned to
10 them in the Settlement Agreement. The Parties are to implement the terms and provisions of the
11 Settlement Agreement.

12 2. Pursuant to California Rules of Court, Rule 3.769(d), this Court makes final the
13 conditional class certification contained in the Order Granting Preliminary Approval of Class
14 Action Settlement on May 6, 2022 ("Prelim. Approval Order"), and thus certifies a class for
15 settlement purposes only defined as: All persons who are or have been employed by Defendant in
16 California as adjunct instructors during the Class Period, which is from December 10, 2019
17 through January 18, 2022.

18 3. Plaintiff Cheryl Burleigh is hereby appointed and designated, for all purposes, as
19 the representative for the Class, and the law firms HammondLaw, P.C. and The Jhaveri-Weeks
20 Firm, P.C. are hereby appointed and designated as Class Counsel. The Court finds that Class
21 Counsel are experienced class action litigators who have expressed the view that the Settlement is
22 fair, reasonable, and adequate, which further supports the Settlement.

23 4. The Court hereby finds that Class Notice has been mailed to Class Members as
24 ordered by the Court, and that such Class Notice fairly and adequately described the terms of the
25 proposed Settlement Agreement, the manner in which Class Members could object to or opt out of
26 the Settlement; was the best notice practicable under the circumstances; was mailed with sufficient
27 notice to Class Members; complied fully with California Rules of Court, Rule 3.769 and all other
28

1 applicable laws; and met the requirements of due process. The Court further finds that a full and
2 fair opportunity has been afforded to Class Members to participate in the proceedings held to
3 determine whether the Settlement Agreement should be given final approval. Accordingly, except
4 as stated in the following paragraph, the Court hereby determines that all Class Members who did
5 not file a timely and proper request to be excluded from the Settlement by the response deadline
6 stated in the Class Member's Notice are bound by this Final Approval Order.

7 5. In response to the Notice, two Class Members requested to be excluded from the
8 Settlement. These Class Members are Kathleen Klinger and Alan Watkins.

9 6. In response to the Notice, no Class Member submitted an objection to the Settlement.

10 7. The Court hereby finally and unconditionally approves the Settlement Agreement
11 as fair, reasonable, and adequate, and specifically:

12 a. Approves the Gross Settlement Amount of \$925,000.00 as set forth in the
13 Settlement Agreement;

14 b. Approves Class Counsel's request for an award of attorneys' fees in the
15 amount of \$370,000.00, which is 40% of the Gross Settlement Amount;

16 c. Approves Class Counsel's hourly rates as reasonable;

17 d. Approves Class Counsel's request for reimbursement of litigation costs of
18 \$14,601.11 in accordance with the Settlement Agreement;

19 e. Approves the Service Award of \$7,500.00 for the Class Representative, as
20 set forth in the Settlement Agreement;

21 f. Approves payment to CPT Group, Inc., the Settlement Administrator, of
22 \$12,500.00 as costs of settlement administration;

23 g. Approves that any amounts from uncashed settlement checks be
24 distributed to Bay Area Legal Aid as the qualified *cy pres* recipient under California Code of
25 Civil Procedure § 384(b);

26 h. Approves the Release contained in the Settlement Agreement which
27 discharges the Released Parties from any and all liability with respect to the Released Claims;
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- i. Approves the allocation of \$50,000.00 in PAGA Penalties, with \$37,500.00 to be paid to the LWDA;
- j. Enters final judgment on the operative Complaint; and
- k. Approves the payment from the Net Settlement Amount of amounts determined by the Settlement Administrator to be due to Class Members, as specified in the Settlement Agreement.

8. The Court orders the following Payment Procedure, in accordance with the Settlement Agreement:

Within 14 business days after the Effective Date, as defined in the Settlement Agreement	Defendant to transmit the GSA to the Settlement Administrator.
Within 10 days of receipt of the GSA	Settlement Administrator to distribute and pay: Settlement Payments to Class Members and PAGA Members, attorneys' fees and costs to Class Counsel, Service Award to Class Representative, and LWDA's share of PAGA Penalties to the LWDA.
Within 90 days from the date of issuance by the Settlement Administrator	Any uncashed checks are to be voided and the funds tendered to the Court-approved <i>cy pres</i> beneficiary following entry of an Amended Judgment Pursuant to California Code of Civil Procedure § 384.

9. Neither this Order, the Settlement Agreement nor any exhibit, document, or instrument delivered thereunder shall be construed as a concession or admission by Defendant that the claims asserted have any merit or that this Action was properly brought as a class or representative action, and shall not be used as evidence of, or used against Defendant as, an admission or indication in any way, including with respect to any claim of any liability, wrongdoing, fault or omission by Defendant or with respect to the truth of any allegation asserted by any person. Neither this Order, the Settlement Agreement, nor any exhibit, document, statement, proceeding or conduct related to the Settlement Agreement, nor any reports or accounts thereof, shall in any event be construed as, offered or admitted in evidence as, received as or

1 deemed to be evidence for any purpose adverse to the Defendant, including, but not limited to,
2 evidence of a presumption, concession, indication or admission by Defendant of any liability,
3 fault, wrongdoing, omission, concession or damage.

4 10. The Court retains continuing and exclusive jurisdiction over all matters related to
5 the administration and consummation of the terms of this Settlement and enforcement of this Final
6 Approval Order, and the Parties are to report to the Court regarding uncashed check funds to be
7 distributed to the *cy pres* recipient pursuant to California Code of Civil Procedure § 384(b) and, if
8 necessary, to conduct a further hearing on certification of distribution of settlement amounts.

9 **IT IS SO ORDERED.**

10 Date: 8/30/2022

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13 Hon. Barry Baskin
14 Judge of the Superior Court
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EXHIBIT 1

1 WILLIAM JHAVERI-WEEKS (SBN 289984)
wjw@jhaveriweeks.com
2 ALLY N. GIROUARD (SBN 336625)
ag@jhaveriweeks.com
3 THE JHAVERI-WEEKS FIRM
351 California Street, Suite 700
4 San Francisco, CA 94104
Tel. (415) 463-8098
5 Fax (415) 367-1439

6 JULIAN HAMMOND (SBN 268489)
jhammond@hammondlawpc.com
7 POLINA BRANDLER (SBN 269086)
pbrandler@hammondlawpc.com
8 ARI CHERNIAK (SBN 290071)
acherniak@hammondlaw.com
9 HAMMONDLAW, P.C.
11780 W. Sample Road, Suite 103
10 Coral Springs, FL 33065
(310) 601-6766
11 (310) 295-2385 (Fax)

12 *Attorneys for Plaintiff and the Putative Class*

13 SPENCER C. SKEEN (SBN 182216)
spencer.skeen@ogletree.com
14 TIM L. JOHNSON (SBN 265794)
tim.johnson@ogletree.com
15 JESSE C. FERRANTELLA (SBN 279131)
jesse.ferrantella@ogletree.com
16 OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.
17 4370 La Jolla Village Drive, Suite 990
San Diego, CA 92122

18 *Attorneys for Defendant*

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20 SUPERIOR COURT OF THE STATE OF CALIFORNIA

21 COUNTY OF CONTRA COSTA

22
23 **CHERYL BURLEIGH**, individually and on
behalf of all others similarly situated,

24 Plaintiff,

25 vs.

26 **NATIONAL UNIVERSITY**, a California Non-
Profit Corporation,

27 Defendant.
28

CASE NO. MSC21-00939

**CLASS AND REPRESENTATIVE ACTION
SETTLEMENT AGREEMENT**

1 This Class and Representative Action Settlement Agreement ("Settlement Agreement" or
2 "Agreement") is made and entered into between, on the one hand, Plaintiff Cheryl Burleigh ("Plaintiff"
3 or "Class Representative"), individually and on behalf of the Settlement Class (as defined below), by
4 and through HammondLaw, P.C. and The Jhaveri-Weeks Firm ("Class Counsel"), and, on the other
5 hand, Defendant National University ("Defendant" or "NU") subject to the approval of the Court, as
6 provided below. This Settlement Agreement is intended by Plaintiff and Defendant to fully, finally,
7 and forever resolve, discharge, and settle the Action (as defined below) and Released Claims (as
8 defined below), upon and subject to the terms and conditions hereof, as follows:

9 **1. Definitions.**

10 As used herein, for the purposes of this Settlement Agreement only, the following terms will be
11 defined as set forth below:

12 1.1 "Action" refers to the civil action entitled: *Burleigh v. National University*, Case No.
13 MSC21-00939, in the Superior Court of California, Contra Costa County.

14 1.2 "Class" or "Class Member(s)" refer to all persons who are or have been employed by
15 Defendant in California as adjunct instructors during the Class Period.

16 1.3 "Class Counsel" refers to the attorneys of record for the Class Representative, *i.e.*,
17 HammondLaw, P.C. and The Jhaveri-Weeks Firm.

18 1.4 "Class Notice" refers to the form of direct-mail notice substantially in the form attached
19 as "Exhibit A," as may be modified by the Court.

20 1.5 "Class Period" means the period from December 10, 2019 through January 18, 2022.

21 1.6 "Complaint" refers to the First Amended Complaint (also referred to herein as "FAC").
22 Plaintiff will take all steps necessary to file the FAC within ten (10) days after execution of this
23 Settlement Agreement. The FAC will add, for purposes of settlement, class claims during the Class
24 Period for the Labor Code § 2802 violation plead in the original complaint but limit the Class and
25 PAGA allegations to adjunct instructors. Defendant will stipulate to the filing of the FAC for purposes
26 of settlement.

27 1.7 "Court" refers to the Superior Court of California for Contra Costa County.
28

1.8 "Final Approval Hearing" refers to the hearing at which the Court will make a final determination whether the terms of the Settlement are fair, reasonable, and adequate for the Class and meet all applicable requirements for approval.

1.9 "Final Approval Order and Judgment" refers to the final order by the Court approving the Settlement following the Final Approval Hearing and entering final judgment.

1.10 "Effective Date" refers to the date the Final Approval Order and Judgment is signed if no objections to the Settlement are filed. If objections are filed and overruled, then the Effective Date is 65 days following the date the Final Approval Order and Judgment is signed. If an appeal is taken from the Final Approval Order and Judgment, then the Effective Date will be ten business days after the appeal is withdrawn or after an appellate decision affirming the final approval decision becomes final.

1.11 "Gross Settlement Amount" (also referred to herein as "GSA") refers to the maximum settlement payment of Nine Hundred and Twenty-Five Thousand Dollars (\$925,000.00). The GSA includes Class Counsel's attorneys' fees, Class Counsel's litigation costs, Service Award, Settlement Administration Costs, the PAGA Penalties payment to the LWDA, and the Net Settlement Amount from which payments to the Settlement Class will be made. This Settlement is non-reversionary and none of the GSA shall revert to Defendant. The GSA does not include employer-side payroll taxes, but the Settlement does not include any payment for claims of wages, so payroll taxes are not anticipated to be implicated. The GSA does not include the forward-looking reimbursement payments that Defendant shall make for at least two years, as stated in Section 4.

1.12 "Net Settlement Amount" (also referred to herein as "NSA") is the GSA minus Court-approved attorneys' fees and litigation costs, Settlement Administration Costs, Service Award, and the LWDA's share of the amount of the GSA allocated to PAGA Penalties. The NSA is the maximum amount that will be available for distribution to Settlement Class Members.

1.13 "PAGA Members" refers to all persons who are or have been employed by Defendant in California as adjunct instructors during the PAGA Period.

1.14 "PAGA Penalties" refers to the Fifty Thousand Dollars (\$50,000.00) allocated to Plaintiff's PAGA claims, which shall be paid as follows: 75% of the PAGA Penalties shall be paid to the LWDA as its share of the of civil penalties for PAGA claims; and 25% shall be distributed to the

1 PAGA Members who worked during the PAGA Period as their share of the settlement of civil
2 penalties for PAGA claims.

3 1.15 "PAGA Period" means the period from December 10, 2019 to January 18, 2022.

4 1.16 "Parties" are Plaintiff and Defendant.

5 1.17 "Released Claims" are those claims defined in Section 16.

6 1.18 "Released Parties" include Defendant and each of their insurers, brands, concepts,
7 affiliates, subsidiaries, parent companies, predecessors, successors, assigns, employees, officers,
8 directors, agents, attorneys, administrators, representatives, heirs, estates, powers-of-attorney, and any
9 individual or entity that could be jointly liable with Defendant.

10 1.19 "Request for Exclusion" refers to a request to be excluded from the Settlement, which
11 must be made in writing in conformity with the requirements set forth in the Class Notice, as well as
12 the Court's order granting preliminary approval, and mailed to the Settlement Administrator and
13 postmarked on or before the Response Deadline. Consistent with law, PAGA Members may not opt
14 out of or be excluded from participating in the settlement under PAGA, and will be entitled to their
15 portion of the PAGA Penalties, regardless of whether the employee submits a valid Request for
16 Exclusion.

17 1.20 "Response Deadline" is forty-five (45) calendar days after the date that the Class Notice
18 is mailed to Class Members, and is the deadline by which Class Members' Requests for Exclusion,
19 disputes regarding Settlement Payments, and/or objections must be postmarked in order to be timely.
20 In the event more than 5% of the Class Members opt out of the Settlement, Defendant shall have the
21 right to void the Settlement. Neither Party nor their counsel shall encourage any Class Member to opt
22 out of the Settlement.

23 1.21 "Service Award" refers to a monetary award to the Plaintiff, in an amount not to exceed
24 Seventy-Five Hundred Dollars (\$7,500.00), or other amount as approved by the Court, to be paid for
25 from the Gross Settlement Amount, subject to approval by the Court, as described below.

26 1.22 "Settlement Administrator" refers to CPT Group, Inc., the third-party settlement
27 administrator mutually selected by the Parties, subject to approval by the Court, to perform the notice,
28 claims administration, and distribution functions further described in this Settlement Agreement.

1 1.23 “Settlement Administration Costs” refers to the cost of paying the Settlement
2 Administrator. This cost will be paid out of the GSA, in an amount not to exceed Twenty Thousand
3 Dollars (\$20,000).

4 1.24 “Settlement Class” or “Settlement Class Member(s)” refers to Class Members who do
5 not request exclusion from the Settlement.

6 1.25 “Settlement Payment” refers to the amount paid to each Settlement Class Member and
7 the PAGA Member’s share of the PAGA Penalties.

8 **2. Procedural History and Recitals.**

9 2.1 On May 6, 2021, Plaintiff filed this Action in Contra Costa County Superior Court as a
10 Private Attorneys General Act (“PAGA”) representative action seeking penalties under Labor Code §
11 2698 *et seq.* for Defendant’s alleged failure to reimburse necessary and reasonable business expenses
12 under Labor Code § 2802.

13 2.2 On October 19, 2021, the Parties participated in a mediation session with Louis Marlin,
14 an experienced mediator. Following the mediation, the Parties reached the basic terms of a settlement
15 which are memorialized in this formal settlement agreement, subject to approval by the Court. As part
16 of the Agreement, the Parties negotiated to permit Plaintiff to amend the Complaint to add a class
17 action claim for violation of Labor Code § 2802 for the duration of the Class Period (and not the full
18 statutory period), despite the fact that Defendant has entered into arbitration agreements with class
19 action waivers. Defendant’s negotiated class claims in this Action shall not be construed as a waiver in
20 any form of its right to compel arbitration in any action or a concession that class claims are
21 appropriate. The Parties jointly represent that this is a fair, reasonable, and adequate settlement and
22 have arrived at this Settlement through arms-length negotiations, considering all relevant factors,
23 present and potential.

24 2.3 This Agreement is entered into solely for the purpose of compromising highly disputed
25 claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant of
26 liability or wrongdoing. Additionally, Defendant reserves the right to contest any issues in this Action
27 if the Settlement is not approved. Defendant denies that it has engaged in any unlawful activity, has
28 failed to comply with the law in any respect, has any liability to anyone under the claims asserted in
the Action, or that but for the Settlement, a Class should be certified in the Action. Notwithstanding,

1 in the interest of avoiding further litigation, Defendant desires to fully and finally settle Released
2 Claims.

3 NOW THEREFORE, in consideration of the covenants and agreements set forth herein, and of
4 the release of all Released Claims, Plaintiff, on behalf of herself and the Class, Class Counsel, and
5 Defendant agree to the terms and provisions of this Settlement Agreement, subject to the approval of
6 the Court.

7 **3. Limitation on Effect of Settlement.**

8 The Parties agree that certification of a class is appropriate for settlement purposes only. This
9 Agreement shall not constitute, in this or any other proceeding, an admission of any kind by
10 Defendant, including without limitation, that certification of a class for trial or any other purpose is
11 appropriate or proper, or that Plaintiff or any Settlement Class Member can establish any of the
12 requisite elements for class treatment of any of the claims in this Action.

13 If, for any reason, the Settlement is not finally approved, this Agreement will be void and the
14 Parties will be restored to their respective positions in the Action as if they had not entered into this
15 Agreement, including that Plaintiff's FAC shall be withdrawn and the operative shall revert to the
16 original Complaint, which only alleges claims under PAGA. The Parties further agree that this
17 Agreement or any documents or orders issued related to this Agreement will not be admissible, other
18 than according to the Agreement's terms, in this or any other proceeding as evidence that either: (i) a
19 class action should be certified, or (ii) Defendant is liable to Plaintiff or any Settlement Class Member.

20 Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations
21 connected with it, shall be construed as an admission or concession by Defendant of any such
22 violations or failures to comply with any applicable law, regulation, or legal requirement. Except as
23 necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its terms and
24 provisions shall not be offered or received as evidence in any action or proceeding to establish any
25 liability or admission of any nature on the part of Defendant, or to establish the existence of any
26 condition constituting a violation of, or a non-compliance with, federal, state, local, or other applicable
27 law.
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1 **4. Injunctive Relief.**

2 Defendant agrees that, for a period of two years from October 20, 2021 forward, it will provide
3 reimbursement payments of at least \$45 per month for adjunct faculty in any month during which such
4 employees are required to work remotely, unless there is a change in the law that would abrogate an
5 employer's obligation to do so. Such reimbursements shall be paid in accordance with the policy
6 Defendant adopted effective November 1, 2021. Defendant acknowledges the instant litigation was a
7 catalyst to its changes to its reimbursement policy. The Parties estimate such payments to amount to
8 approximately \$1,000,000.

9 **5. Establishment of the GSA and Calculation of the NSA and Distribution of**
10 **Settlement Proceeds.**

11 5.1 Within 14 business days after the Effective Date, Defendant shall transmit the GSA to
12 the Settlement Administrator. This Settlement is non-reversionary and under no circumstances will
13 any part of the GSA revert to Defendant.

14 5.1.1 The NSA shall be allocated as follows: (a) the NSA, less the PAGA Members'
15 share of the PAGA Penalties, shall be allocated among the Settlement Class Members on a
16 proportional basis based on the number of pay periods worked as a Class Member during the Class
17 Period, and (b) the PAGA Members' share of the PAGA Penalties (i.e., the remaining portion of the
18 NSA) shall be allocated to the PAGA Members during the PAGA Period on a proportional basis based
19 on the number of pay periods worked as a PAGA Member during the PAGA Period.

20 5.1.2 Each Settlement Payment will be treated as non-wages (reimbursement of
21 expenses, payment of interest, and PAGA Penalties), and will be reported on an IRS Form 1099 as
22 may be required.

23 5.1.3 If a Class Member timely and validly submits a Request for Exclusion, as set
24 forth herein, his or her share will return to the NSA and will be distributed to the remaining Settlement
25 Class Members. PAGA Members cannot opt out of the PAGA Penalties.

26 5.2 Payments to Class Members and PAGA Members pursuant to this Settlement
27 Agreement will not be construed as compensation for purposes of determining eligibility for or benefit
28 calculations of any health and welfare benefit plan, retirement benefit plan, vacation benefit plan,
unemployment compensation, including, without limitation, all plans, subject to Employee Retirement

1 Income Security Act ("ERISA"). The Parties agree these payments do not represent any modification
2 of any employee's previously-credited hours of service or other eligibility criteria under any employee
3 pension benefit plan, employee welfare benefit plan, or other program or policy.

4 **6. Attorneys' Fees and Costs.**

5 Class Counsel shall request attorneys' fees of up to forty percent of the GSA (\$925,000) – *i.e.*,
6 up to \$370,000. Class Counsel shall also request up to \$30,000 for reimbursement of litigation costs.
7 Defendant agrees to not oppose Class Counsel's request for attorneys' fees and costs in these amounts.
8 If the GSA increases pursuant to the escalator clause, Class Counsel's attorneys' fees shall include up
9 to 40% of the increase to the GSA. The terms of this Settlement Agreement will not be abrogated and
10 will continue in full force even if the Court awards a lower amount of attorneys' fees or costs than
11 requested by Class Counsel. However, Class Counsel retains the right to appeal any such reductions,
12 but such an appeal will delay Defendant's obligation to make all payments set forth in this Settlement
13 Agreement. Any unapproved amounts of attorneys' fees and litigation costs will be added to the NSA
14 and will be distributed to the Settlement Class Members.

15 **7. Service Award.**

16 Class Counsel shall request a Service Award of up to Seven Thousand Five Hundred Dollars
17 (\$7,500) for Plaintiff. Any unapproved amount will be added to the NSA and be distributed to the
18 Settlement Class Members.

19 **8. PAGA Penalties.**

20 Subject to Court approval, \$50,000 shall be attributed to Plaintiff's claims under PAGA. The
21 Settlement Administrator shall apportion and distribute the \$50,000 payment as follows: (a) \$37,500
22 shall be paid to the LWDA as its 75% share of the settlement of civil penalties for PAGA claims; and
23 (b) \$12,500 shall be paid to the PAGA Members as their 25% share of the settlement of civil penalties
24 for PAGA claims. PAGA Members cannot opt out of the PAGA Penalties. If the Court approves an
25 amount other than \$50,000, that approved amount will be apportioned 75% to the LWDA and 25% to
26 the PAGA Members.

27 **9. Costs of Settlement Administration.**

28 The Parties have mutually agreed to the selection of the Settlement Administrator, to undertake
the administration of the Settlement in this Action. The administration duties include, without

1 limitation, the following: establishing and maintaining a qualified settlement account for the NSA,
2 obtaining tax identification number(s) for Defendant applicable to the Settlement, calculating the Class
3 Member Payments, performing an initial National Change of Address (NCOA) search upon receipt of
4 the Class Member mailing addresses, mailing the Class Notices, performing one skip trace on Class
5 Notices which are returned as undeliverable, reviewing and processing Requests for Exclusion,
6 disputes, and objections, setting up a toll-free number, mailing the Settlement Payments and tax forms
7 to the Settlement Class Members, and setting up a static website regarding the Settlement. The
8 Settlement Administrator will report payment of the individual Settlement Payments to all required
9 taxing and other authorities, and issue Internal Revenue Service Form 1099s as may be required. The
10 Parties estimate that the costs and expenses of administration of the settlement will not exceed
11 \$20,000. Any amounts allocated but not paid to the Settlement Administrator will be added to the
12 NSA and distributed to the Class.

13 **10. Notice Administration.**

14 10.1 Within fourteen business days of the order granting preliminary approval of the
15 Settlement ("Preliminary Approval Order"), Defendant shall provide confidentially the Settlement
16 Administrator only, the following information ("Class Data List"):

- 17 (a) the names, employment identification number, last known addresses, last known
18 telephone numbers, and Social Security numbers of each Class Member; and
19 (b) the number of pay periods for each Class Member during the Class Period.
20 (c) the number of pay periods for each PAGA Member during the PAGA Period.

21 10.1.1 The Class Data List is to be treated by the Settlement Administrator as
22 confidential. The Settlement Administrator will only use this information to carry out its duties as specified
23 in this Settlement and will not be shared with any person without Defendant's express permission.

24 10.2 Upon its receipt of the Class Data List, the Settlement Administrator shall access the
25 National Change of Address ("NCOA") Database, and update the addresses contained therein.

26 10.3 Within twenty-eight days of the Preliminary Approval Order, the Settlement
27 Administrator shall provide the Class Notice by bulk first class mail, forwarding requested, to the
28 Class Members at the addresses identified through the process described above.

1 10.4 As to any Class Notices that are returned as undeliverable, or where the NCOA
2 Database indicates that the last known address of any Class Member is invalid or otherwise
3 undeliverable, the Settlement Administrator will perform a skip trace procedure and re-mail all
4 returned, undelivered mail within five calendar days of the date on which the Settlement Administrator
5 is informed that a Class Notice is undeliverable or otherwise invalid.

6 10.5 The Settlement Administrator and all those working through, in concert with, or on
7 behalf of the Settlement Administrator, shall be obligated to take all reasonable steps to maintain the
8 confidentiality of Class Member information and to carry out the other duties enumerated in the
9 Settlement Agreement, including calculating each Class Member's and PAGA Member's potential
10 share of the Settlement.

11 10.6 The Settlement Administrator shall provide Defendant's counsel and Class Counsel
12 with weekly summary reports, including the total number of Class Notices that were returned as
13 undeliverable, the total number of objections, disputes, and/or Requests for Exclusion. The Settlement
14 Administrator shall maintain records of its work, which will be available for inspection upon request
15 by Defendant's counsel or Class Counsel. This section does not permit Class Counsel to review the
16 Class Data List.

17 10.7 The Class Notice will be a pre-printed form, in substantially the form attached hereto as
18 Exhibit A, to be approved by the Court. In addition to other information contained on the Class
19 Notice, the Class Notice will include an explanation of the pro rata distribution formula used to
20 determine the share of the Net Settlement Amount that the recipient may be entitled to receive under
21 the Settlement.

22 **11. Requests for Exclusion.**

23 11.1 Any Class Member may elect to opt out of the Settlement by submitting a written
24 Request for Exclusion to the Settlement Administrator, postmarked no later than the Response
25 Deadline. The Request for Exclusion must contain the following: full name, signature, address, and
26 last four digits of his or her social security number; case name; and a clear statement that he or she
27 seeks to be excluded from the Settlement. A Class Member who fails to comply with the opt-out
28 procedure set forth herein on or before the Response Deadline will not be excluded and will instead be
bound by all provisions of the Settlement Agreement and all orders issued pursuant thereto.

1 11.2 Any Class Member who elects to opt out of the Settlement in the manner and within the
2 time limits specified above (1) will not have any rights under the Settlement Agreement; (2) will not be
3 entitled to receive any compensation as a Class Member under the Settlement Agreement; (3) will not
4 have standing to submit any objection to the Settlement Agreement; and (4) will not be bound by the
5 Settlement Agreement except with respect to the PAGA Penalties.

6 11.3 Except for persons who elect to opt out of the Settlement in the manner and within the
7 time limits specified above, in the Preliminary Approval Order, and in the Class Notice, all Class
8 Members will be deemed to be within the Class for all purposes under this Settlement Agreement, will
9 be bound by the terms and conditions of this Settlement Agreement (including the release provisions in
10 Section 16 and its subparts), including all orders issued pursuant thereto, and will be deemed to have
11 waived all unstated objections and opposition to the fairness, reasonableness, and adequacy of this
12 Settlement Agreement and any of its terms.

13 11.4 Consistent with law, no PAGA Member may opt out of the PAGA Penalties.

14 **12. Objections.**

15 12.1 Any Class Member who does not request exclusion from the Settlement may object to
16 the Settlement by sending the Settlement Administrator, not later than the Response Deadline, a
17 written statement objecting to the Settlement. The written objection must contain: full name, address,
18 last four digits of his or her Social Security number, the case name and number, and a clear statement
19 of the basis for his or her objection. The Settlement Administrator shall immediately send all
20 objections to counsel for Defendant and Class Counsel.

21 12.2 Counsel for the Parties shall file any responses to any objections at the time the Motion
22 for Final Approval is filed. Class Members may, prior to the Final Approval Hearing, withdraw their
23 objections or opt out requests in a writing to the Settlement Administrator, which may then be filed
24 with the Court.

25 **13. Resolution of Disputes.**

26 If any Class Member timely disputes the calculation of the settlement allocation listed on his or
27 her Class Notice, the dispute will be submitted to the Settlement Administrator, who will examine the
28 records, address the dispute with Defendant if needed, and either verify the calculation or provide a
corrected calculation. Disputes must be in writing and submitted to the Settlement Administrator,

1 postmarked on or before the Response Deadline. The dispute must contain: Class Member's full
2 name, address, signature, and last four digits of his or her Social Security number; and any facts
3 supporting the Class Member's dispute, along with any supporting materials confirming that the
4 calculation on the notice is incorrect. The Settlement Administrator's determination of disputes will be
5 final and non-appealable.

6 **14. Payment Procedure.**

7 14.1 Payments to Settlement Class Members, Class Counsel, Class Representative, Taxing
8 Authorities, and LWDA: Within 10 days of receipt of the GSA, the Settlement Administrator will
9 distribute, subject to approval by the Court: (a) Settlement Payments to Class Members and PAGA
10 Members; (b) attorneys' fees and costs to Class Counsel; (c) Settlement Administration Costs to the
11 Settlement Administrator; (d) Service Award to the Class Representative; and (e) the LWDA's share of
12 the PAGA Penalties.

13 14.2 Uncashed Checks: Settlement checks that are not cashed within ninety days from the
14 date of issuance by the Settlement Administrator will be voided and the funds will be tendered to Bay
15 Area Legal Aid as the *cy pres* in accordance with California Code of Civil Procedure § 384. The
16 Settlement and the release of Released Claims will remain binding upon all Class Members and PAGA
17 Members, whether or not they cashed their settlement checks.

18 **15. Taxes.**

19 15.1 The Settlement Payments shall be treated as non-wage income because they reflect
20 reimbursement for business expenses, interest, and penalties.

21 15.2 Tax Treatment of Service Award: Plaintiff will receive an IRS Form 1099 for her
22 individual Service Award and will be responsible for payment of any taxes owing on said amount.

23 15.3 Tax Treatment of Attorneys' Fees and Costs Award: Class Counsel will receive an IRS
24 Form 1099 for any amount awarded to Class Counsel in the form of attorneys' fees or costs and will be
25 responsible for payment of any taxes owing on said amount.

26 15.4 No Tax Advice: The Parties are not giving any tax advice in connection with the
27 Settlement or any payments to be made pursuant to this Settlement including, but not limited to, within
28 the meaning of United States Treasury Circular 230 (31 CFR part 10, as amended). The Parties do not

1 assume any liability for taxes, fees, costs, or assessments resulting from any Settlement Class
2 Members' failure to timely pay his or her share of taxes, interest, fees, or penalties owed.

3 **16. Release.**

4 16.1 Settlement Class Released Claims: Upon the Court's final approval of the Settlement
5 and entry of final judgment, each Class Member shall be deemed to have released Defendant and the
6 Released Parties from any and all "Settlement Class Members' Released Claims." For the purposes of
7 this Agreement, the Settlement Class Members' Released Claims are defined as: Any and all claims,
8 debts, liabilities, demands, obligations, guarantees, costs, expenses, attorney's fees, damages, actions
9 or causes of action which are alleged, or could have been alleged based on the facts, circumstances,
10 and primary rights at issue in the operative Complaint filed in this Action, and arising during the Class
11 Period, including without limitation to, claims for failure to reimburse business expenses, declaratory
12 relief, injunctive relief, claims for penalties of any nature whatsoever arising out of the Released
13 Claims, or any other benefit claimed on account of allegations and claims which are related to the
14 allegations and claims asserted in the operative Complaint filed in this Action and thus could have
15 been asserted. This release shall apply to claims arising at any point during the Class Period. The
16 release shall exclude claims for vested benefits, wrongful termination, unemployment insurance,
17 disability, workers' compensation, and claims outside of the Class Period.

18 16.2 PAGA Members' Released Claims: Upon the Court's final approval of the Settlement
19 and entry of final judgment, each PAGA Member shall be deemed to have released Defendant and the
20 Released Parties from any and all "PAGA Members Released Claims." For the purposes of this
21 Agreement, the PAGA Members' Released Claims are defined as: any and all claims for penalties
22 under the California Private Attorneys' General Act, Labor Code section 2698 *et. seq.* based on the
23 facts, circumstances, and primary rights at issue in the operative Complaint filed in this Action, and
24 arising during the PAGA Period, including without limitation to, claims for failure to reimburse
25 business expenses. This release shall apply to claims arising at any point during the PAGA Period.
26 The release shall exclude claims for vested benefits, wrongful termination, unemployment insurance,
27 disability, workers' compensation, and claims outside of the PAGA Period.

28 16.3 Plaintiff's General Release: Plaintiff releases acquits, discharges, and covenants not to
sue Defendant or the Released Parties for any claim, whether known or unknown, which she has ever

1 had, or hereafter may claim to have, arising on or before the date she signs this Agreement, including
2 without limitation to, any claims relating to or arising out of any aspect of her relationship with
3 Defendant, or the termination of that relationship, any claims for unpaid compensation, wages,
4 reimbursement for business expenses, penalties, or waiting time penalties under the California Labor
5 Code, the California Business and Professions Code, the federal Fair Labor Standards Act, 29 U.S.C.
6 section 201, *et seq.*, or any state, county, or city law or ordinance regarding wages or compensation;
7 any claims for employee benefits, including without limitation, any claims under the Employee
8 Retirement Income Security Act of 1974; any claims of employment discrimination on any basis,
9 including without limitation, any claims under Title VII of the Civil Rights Act of 1964, the Civil
10 Rights Act of 1866, 42 U.S.C. section 1981, the Civil Rights Act of 1991, the Americans with
11 Disabilities Act of 1991, the Family and Medical Leave Act of 1993, the California Government Code,
12 or any other state, county or city law or ordinance regarding employment discrimination. Plaintiff
13 acknowledges and agrees that the foregoing general release is given in exchange for the consideration
14 provided to her under this Agreement by Defendant. However, this release shall not apply to claims
15 for workers' compensation benefits, unemployment insurance benefits, pension or retirement benefits,
16 or any other claim or right that as a matter of law cannot be waived or released. Plaintiff expressly
17 waives any rights or benefits available to her under the provisions of Section 1542 of the California
18 Civil Code, which provides as follows:

19 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR
20 RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
21 THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER,
22 WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
23 OR RELEASING PARTY.

24 Plaintiff understands fully the statutory language of Civil Code section 1542 and, with this
25 understanding, nevertheless elects to, and does, assume all risks for claims that have arisen, whether
26 known or unknown, which she ever had, or hereafter may claim to have, arising on or before the date
27 of her signature to this Agreement, and specifically waives all rights she may have under California
28 Civil Code section 1542.

1 **17. Application for Preliminary Approval Order.**

2 17.1 After the Parties' execution of this Settlement Agreement, Plaintiff shall file a motion
3 for preliminary approval of the Settlement (after providing Defendant an opportunity for review),
4 requesting a Preliminary Approval Order that contains the following provisions:

5 17.1.1 preliminarily approving the Settlement Agreement;

6 17.1.2 preliminarily approving and certifying the Class for settlement purposes only;

7 17.1.3 approving the form of the Class Notice, and finding that the proposed method of
8 disseminating the Class Notice meets the requirements of due process and is the best notice practicable
9 under the circumstances;

10 17.1.4 approving the procedures and the deadline by which Class Members may assert
11 objections to the Settlement, seek exclusion from the Settlement, and/or dispute their Settlement
12 Payments;

13 17.1.5 establishing a deadline for the Parties to submit papers/briefing in response to
14 any objections and in support of final approval of the Settlement Agreement; and

15 17.1.6 setting a date for the Final Approval Hearing.

16 **18. Final Approval Order and Judgment.**

17 18.1 If the Settlement is preliminarily approved by the Court, the Parties shall thereafter
18 request that the Court enter an order granting final approval of the Settlement and judgment based
19 thereon ("Final Approval Order and Judgment"), which includes the following provisions:

20 18.1.1 confirming certification of the Class for settlement purposes only;

21 18.1.2 finding that the dissemination of the Class Notice in the form and manner
22 ordered by the Court was accomplished as directed and met the requirements of due process;

23 18.1.3 finally approving the Settlement Agreement as fair, reasonable, and adequate
24 and directing consummation of the Settlement in accordance with its terms and provisions;

25 18.1.4 directing the Parties to implement the terms of the Settlement Agreement;

26 18.1.5 releasing and discharging the Defendant and Released Parties from any and all
27 liability with respect to the Released Claims;

28 18.1.6 awarding reasonable attorneys' fees and litigation costs to Class Counsel as
determined by the Court;

1 18.1.7 awarding a Service Award to Class Representative as determined by the Court;

2 18.1.8 awarding Settlement Administration Costs to the Settlement Administrator as
3 determined by the Court;

4 18.1.9 approving the allocation of PAGA Penalties to the LWDA;

5 18.1.10 entering final judgment on the operative Complaint; and

6 18.1.11 preserving continuing and exclusive jurisdiction over all matters related to the
7 administration and consummation of the terms of this Settlement and enforcement of the Judgment,
8 and directing the Parties to report to the Court regarding funds to be distributed to the *cy pres* recipient,
9 pursuant to California Code of Civil Procedure § 384(b).

10 **19. Escalator Clause.**

11 The Class consists of 1,765 individuals. If the total number of Class Members exceeds 1,765
12 by more than 5%, then the Gross Settlement Amount shall increase by a proportionate percentage for
13 all additional persons above the five percent allowance (*i.e.*, if the number of Class Members increases
14 by seven percent, the Gross Settlement Amount will increase by two percent).

15 **20. No Admissions.**

16 The Parties understand and agree that this Settlement Agreement is the result of a good faith
17 compromise settlement of disputed claims, and no part of this Settlement Agreement, or the
18 negotiations leading thereto, or any document filed in support thereof, whether or not the Settlement is
19 finally approved and/or consummated, may be offered or should be construed as an admission of any
20 wrongdoing by Defendant or the Released Parties.

21 **21. Representation and Warranty.**

22 Defendant represents and warrants that it has been paying non-adjunct employees required to
23 work remotely as a result of COVID-19 expense reimbursement compensation of \$25 per pay period,
24 or \$50 per month. Plaintiff relies on this representation in agreeing to amend the FAC to eliminate
25 non-adjunct employees from this Action.

26 **22. Avoidance of Undue Publicity.**

27 The Parties and their counsel agree that they will not issue any press releases, communicate to
28 the press, media or to the public, through social media or otherwise, the Settlement terms or amount.

1 Nothing herein will restrict Class Counsel from including publicly available information regarding this
2 Settlement in future judicial submissions regarding Class Counsel's qualifications and experience.

3 **23. Construction.**

4 This Settlement Agreement was entered into after substantial good faith, arm's-length
5 negotiations between the Parties. This Settlement Agreement has been entered into without any
6 coercion and under no duress. The Parties acknowledge and agree that all Parties had an equal hand in
7 drafting this Settlement Agreement so that it will not be deemed to have been prepared or drafted by
8 one party or another.

9 **24. Due Authority of Attorneys.**

10 Each of the attorneys executing this Settlement Agreement on behalf of one or more Parties
11 hereto warrants and represents that he or she has been duly authorized and empowered to execute this
12 Settlement Agreement on behalf of each such respective Party and to bind them to the terms hereof.
13 The Parties also warrant that this Agreement is entered into knowingly and willingly and there is no
14 fraud, duress, or undue influence.

15 **25. Entire Agreement.**

16 This Settlement Agreement (including Exhibits hereto) sets forth the entire agreement of the
17 Parties with respect to its subject matter and supersedes any and all other prior agreements and all
18 negotiations leading up to the execution of this Settlement Agreement, whether oral or written,
19 regarding the subjects covered herein. The Parties acknowledge that no representations, inducements,
20 warranties, promises, or statements relating to the subjects covered herein, oral or otherwise, have been
21 made by any of the Parties that are not embodied or incorporated by reference herein. Except as
22 otherwise set forth in this Agreement, any notice, order, judgment, or other exhibit that requires
23 approval of the Court must be approved without material alteration that substantially changes or
24 increases the cost of compliance with this Settlement Agreement in order for this Settlement
25 Agreement to become effective. Before invoking this provision to challenge the effectiveness of this
26 Settlement Agreement, the invoking party shall consult with, and if necessary mediate in good faith
27 with, the other party in an effort to resolve any such challenge.
28

1 **26. Modification or Amendment.**

2 This Settlement Agreement may not be modified or amended except in a writing signed by all
3 signatories hereto or their attorneys or their successors in interest.

4 **27. Successors.**

5 This Settlement Agreement will be binding upon and inure to the benefit of the Parties hereto
6 and their respective heirs, executors, administrators, successors and assigns, and upon any corporation,
7 partnership or other entity into or with which any Party hereto may merge, combine, or consolidate.

8 **28. Counterparts.**

9 This Agreement may be executed in one or more counterparts by facsimile or electronic
10 signature which for purposes of this Agreement shall be accepted as an original. All executed
11 counterparts and each of them will be deemed to be one and the same instrument. Any executed
12 counterpart shall be admissible in evidence to prove the existence and contents of this Agreement.

13 **29. Waivers.**

14 The waiver by any Party of any breach of this Settlement Agreement will not be deemed or
15 construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this
16 Settlement Agreement.

17 **30. Governing Law.**

18 This Settlement Agreement will be governed by and construed, enforced, and administered in
19 accordance with the internal laws of the State of California. The parties intend for this Agreement to
20 be admissible and binding under Code of Civil Procedure section 664.6.

21 **31. Headings.**

22 The headings contained in this Settlement Agreement are for convenience and reference
23 purposes only, and will not be given weight in its construction.

24 **32. Notices.**

25 Any notices, requests, demands, or other communications required or permitted to be given
26 pursuant to this Settlement Agreement, other than the contemplated Class Notice to the Class
27 Members, must be in writing and mailed as follows:

28 32.1 To Class Representative, the Class and Class Counsel to the attention of: (1) Julian
Hammond, Esq., HammondLaw, P.C., 11780 W. Sample Road, Suite 103, Coral Springs, FL 33065,

Telephone: (310) 601-6766; and (2) William Jhaveri-Weeks, The Jhaveri-Weeks Firm, 351 California Street, Suite 700, San Francisco, CA 94104, Telephone: (415) 463-8098.

32.2 To Defendant, to the attention of Spencer C. Skeen, Tim L. Johnson, and Jesse Ferrantella of Ogletree, Deakins, Nash, Smoak & Stewart, P.C., 4370 La Jolla Village Drive, Suite 990, San Diego, CA 92122.

IN WITNESS WHEREOF, this Settlement Agreement has been duly executed by and on behalf of the Parties, as follows:

Plaintiff and Class Representative

Dated: Jan 13, 2022

By: Dr. Cheryl Burleigh
Cheryl Burleigh

National University

Dated:

By: _____
Name:
Title:

APPROVED AS TO FORM:

Counsel for Plaintiff and Proposed Class Counsel

Dated: January 13, 2022

By: Julian Hammond
Julian Hammond
HammondLaw, P.C.

Dated: January 13, 2022

By: William Jhaveri-Weeks
William Jhaveri-Weeks
The Jhaveri-Weeks Firm

Telephone: (310) 601-6766; and (2) William Jhaveri-Weeks, The Jhaveri-Weeks Firm, 351 California Street, Suite 700, San Francisco, CA 94104, Telephone: (415) 463-8098.

32.2 To Defendant, to the attention of Spencer C. Skeen, Tim L. Johnson, and Jesse Ferrantella of Ogletree, Deakins, Nash, Smoak & Stewart, P.C., 4370 La Jolla Village Drive, Suite 990, San Diego, CA 92122.

IN WITNESS WHEREOF, this Settlement Agreement has been duly executed by and on behalf of the Parties, as follows:

Plaintiff and Class Representative

Dated:

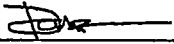
By:

Cheryl Burleigh

National University

Dated: Jan 26, 2022

By:


Dave Lawrence (Jan 26, 2022 11:14 PST)

Name: Dave C. Lawrence, MBA, Ed.D.

Title: Vice Chancellor, Finance

APPROVED AS TO FORM:

Counsel for Plaintiff and Proposed Class Counsel

Dated:

By:

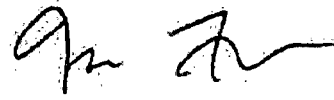
Julian Hammond
HammondLaw, P.C.

Dated:

By:

William Jhaveri-Weeks
The Jhaveri-Weeks Firm

Counsel for Defendant National University



Dated: January 26, 2022

By: _____

Spencer C. Skeen

Tim L. Johnson

Jesse Ferrantella

Ogletree, Deakins, Nash, Smoak & Stewart,
P.C.

EXHIBIT A

Burleigh v. National University
Case No. MSC21-00939
Superior Court of California, Contra Costa County

If you worked as an adjunct instructor for National University in California between December 10, 2019 and January 18, 2022, you are entitled to receive money from a class action settlement.

The California Superior Court, Contra Costa County, authorized this Class Notice.
This is not a solicitation from a lawyer.

PLEASE READ THIS CLASS NOTICE CAREFULLY. THIS PROPOSED SETTLEMENT AFFECTS YOUR LEGAL RIGHTS.

- The Settlement resolves a class-action lawsuit, *Burleigh v. National University* (the “Lawsuit”), which alleges that National University (“Defendant”) failed to reimburse Class Members for necessary business expenses associated with teaching online courses or otherwise working remotely, including the cost of home internet access.
- The Court has not made any determination of the validity of the claims in the Lawsuit. Defendant denies those claims and contends that it complied with all applicable laws.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE PAYMENT	Get a payment, and give up your legal rights to pursue the claims released by the settlement of the Lawsuit.
OPT OUT OF THE SETTLEMENT	Exclude yourself from the Settlement, get no payment, and retain your legal rights to pursue the claims that would otherwise be released by the settlement of the Lawsuit.
OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, CPT Group, Inc., about why you object to the Settlement, and they will forward your concerns to counsel who will provide them to the Court. If the Court approves the Settlement despite your objection, you will still be bound by the Settlement. If you timely object, you or your attorney may also address the Court during the Final Approval hearing scheduled for <u>DATE AND TIME</u> in Department 7 of the Contra Costa County Superior Court.

- The Settlement Fund will be used to settle claims of all Class Members. “Class Members” refers to all persons who are or have been employed by Defendant in California as adjunct instructors from December 10, 2019 through January 18, 2022 (the “Class Period”). The amount of Class Members’ individual settlements will be determined by the number of pay periods they worked during the Class Period. The Settlement fund will also be used to settle claims of all Private Attorneys General Act (“PAGA”) Members. “PAGA Members” refers to all persons who are or have been employed by Defendant in California as adjunct instructors from December 10, 2019 through January 18, 2022 (the “PAGA Period”).

- The Court has preliminarily approved this Settlement. A Final Approval hearing addressing the fairness, adequacy, and reasonableness of the Settlement will be held on FINAL APPROVAL DATE to determine whether the Settlement should receive the Court's final approval.
- Lawyers for the Class Members will be asking the Court to award up to 40% (\$370,000) of the Settlement as attorneys' fees for investigating the facts, litigating the case, and negotiating the \$925,000 Settlement, which also requires Defendant to provide reimbursement payments of at least \$45 per month for adjunct faculty in any month during which such employees are required to work remotely, until at least October 20, 2023. Lawyers for the Class Members will also ask the Court to award reasonable costs not to exceed \$30,000 incurred during the Lawsuit. They also will ask the Court to approve an incentive payment in the amount of \$7,500 to the named Plaintiff (*i.e.*, Class Representative), who assisted in litigating this Lawsuit for the benefit of all Class Members and who will also be providing Defendant with a general release of claims.
- Any questions? Read on or visit www. [REDACTED] .com.

BASIC INFORMATION

1. Why did I get this Class Notice package?

Defendant's records show that you work, or previously worked, for Defendant in California as an adjunct instructor at some point between December 10, 2019 through January 18, 2022. You were sent this Class Notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options, before the Court decides whether to finally approve the Settlement. If the Court approves the Settlement and then any objections and appeals are resolved, a "Settlement Administrator" appointed by the Court will make the payments described in this Notice. This Notice explains the Lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

2. What is this Lawsuit about?

Plaintiff in this Lawsuit, Cheryl Burleigh, alleged that during the Class Period, Defendant violated California law by failing to reimburse Class Members for necessary business expenses. Plaintiff also alleged that during the PAGA Period, Defendant violated PAGA by failing to reimburse PAGA Members for necessary business expenses. As noted above, Defendant denies this allegation and contends that Plaintiff's claims have no merit. A copy of the most recent version of the Complaint may be found at www. [REDACTED] .com.

3. Why is this a class action?

In a class action, one or more people called class representatives make allegations on behalf of other people who they allege have similar claims. All these people comprise a class and are referred to as class members, except for those who decide to exclude themselves from the class in response to the class notice. In a class action, one court resolves the issues for all class members in a single case.

4. Why is there a Settlement?

The Parties disagree on the probable outcome of the case with respect to liability and damages. Plaintiff believes that the claims asserted against Defendant are valid and could be proven if the case went to trial. Defendant believes that Plaintiff's claims have no merit and that she would not prevail if the case went to trial. Defendant further contends that, other than in the context of this Settlement, the case is not suitable for class treatment. The Court has

not decided in favor of the Plaintiff or the Defendant. There has been no trial in this case. Instead, both Parties recognize the risks, expenses, and disruptions that are associated with continued litigation, and they have therefore chosen to resolve their differences by entering into this Settlement. The Parties entered into this Settlement after arm's length negotiations using the services of an experienced and neutral mediator. Plaintiff and Class Counsel believe that this Settlement is fair and reasonable and is in the best interest of all Class Members.

5. What is a class action settlement?

In a class action, the Court must approve the terms of the Settlement described below as fair and reasonable to the Class. Once approved, the Settlement will affect all Class Members except those who choose to opt out. This Class Notice explains your legal rights, the terms of the Settlement, what you must do to participate or opt out, and the amount of money you may get. Please read this entire Class Notice carefully.

6. How do I know if I am a Class Member?

If you fit the following description, then you are a Class Member: Adjunct instructors who worked for National University in California between December 10, 2019 and January 18, 2022.

7. Are there exceptions to being included?

You are not a Class Member if you were not employed by Defendant as an adjunct instructor in California during the Class Period. You can also choose to be excluded from this Settlement by opting out of this Settlement, in which case you will not be a Class Member. However, under the law, you cannot opt out or request to be excluded from the portion of this Settlement attributed to PAGA penalties.

8. I'm still not sure if I am a Class Member. What should I do?

You may contact the Settlement Administrator for further information. Or you can do nothing, and if you are entitled to a payment you will be paid. Be mindful, however, that if this Class Notice reaches you and the address where you now live is different, you should contact the Settlement Administrator and provide updated information so that any future correspondence or the settlement check itself reaches you and is not returned as an address unknown.

9. What does the Settlement provide?

The Parties have agreed to settle the Lawsuit for a "Gross Settlement Amount" of Nine Hundred and Twenty-Five Thousand Dollars (\$925,000). The Settlement is "non-reversionary," which means that the entire Gross Settlement Amount will be paid out, subject to various Court-approved deductions listed below in this Section, and none of the funds will revert to Defendant. As part of the negotiation of the Settlement, the Parties have agreed to a Class Period that runs from the date of a prior settlement and release of PAGA claims. For more information, see Section 22, below. In addition to the Gross Settlement Amount, Defendant will bear all employer-side payroll tax payments due and payable to federal and state tax authorities as a result of this Settlement, if any. The Gross Settlement Amount shall be deemed in satisfaction of claims for: (1) unreimbursed business expenses, penalties, interest, and/or other amounts to be paid to Class Members and to PAGA Members; (2) attorneys' fees not to exceed 40% of the Gross Settlement Amount and litigation costs not to exceed \$30,000; (3) an incentive payment to Plaintiff not to exceed \$7,500; (4) all costs of third-party Settlement administration not expected to exceed \$20,000; and (5) payment of \$37,500 to the Labor and Workforce Development Agency ("LWDA") as its share of penalties under the Private Attorneys General Act of 2004 ("PAGA") (California Labor Code §§ 2698 *et seq.*).

10. How will Settlement payments to Class Members be calculated?

The funds payable to Class Members will be divided up pro rata using the following formula:

From the Gross Settlement Amount, payments will be made to Class Counsel, the Class Representative, the LWDA for its share of PAGA Penalties, and the Settlement Administrator. What remains after these payments are made is called the "Net Settlement Amount." Its amount will depend on the final Court-approved amounts of the deductions just listed. The Net Settlement Amount shall be paid as follows: (a) the Net Settlement Amount, less the PAGA Members' share of the PAGA Penalties, shall be allocated among the Settlement Class Members on a proportional basis based on the number of pay periods worked as a Class Member during the Class Period, and (b) the PAGA Members' share of the PAGA Penalties (i.e., the remaining portion of the Net Settlement Amount) shall be allocated to the PAGA Members during the PAGA Period on a proportional basis based on the number of pay periods worked as a PAGA Member during the PAGA Period.

11. How much will I get from the Settlement?

Defendant's records indicate that you worked << >> pay periods as an adjunct instructor during the Class Period. Based on these records, your estimated payment as a Class Member would be \$<<EstimatedAward>>.

Class Members who do not opt out will be paid their share of the Net Settlement Amount. The Settlement Payments will be treated as non-wage income for tax purposes.

If you believe that you worked a different number of pay periods (i.e., had a different number of paychecks issued to you) than indicated by the numbers above, you may dispute your Settlement Payment calculation by providing written documentation to the Settlement Administrator supporting your position on or before **[RESPONSE DEADLINE]**. Your dispute must contain: your full name, address, signature, and last four digits of your Social Security number, as well as facts supporting your dispute, along with any supporting materials confirming that the pay periods attributed to you are incorrect. If you do not dispute your calculation and do not opt out of the Settlement, you will receive a Settlement Payment based on the above pay periods and will be bound by the Settlement. The Settlement Administrator's determination of disputes will be final and non-appealable. **If you are a Class Member, you do not need to take any action to receive the Settlement Payment calculated as set forth above.**

Defendant's records indicate that you worked << >> pay periods as an adjunct instructor during the PAGA Period. Based on these records, your estimated payment as a PAGA Member would be \$<<EstimatedAward>>.

Consistent with the law, no PAGA Member may opt out of the settlement of the PAGA claims.

12. When would I get my payment?

As set forth in Section 18, below, the Court will hold a hearing on **[DATE OF FINAL APPROVAL]** to decide whether to approve the Settlement. If the Court approves the Settlement, after that there may be appeals if anyone has filed a timely objection. It is always uncertain how and when objections and appeals will be resolved. To check on the progress of the Settlement, you may call the Settlement Administrator at **XXX-XXX-XXXX**, or contact Class Counsel (see Section 22, below, for contact info). *Please be patient.*

13. What claims am I releasing if I participate in the Settlement?

Class Members who participate in the Settlement will release Defendant, and each of their insurers, brands, concepts,

affiliates, subsidiaries, parent companies, predecessors, successors, assigns, employees, officers, directors, agents, attorneys, administrators, representatives, heirs, estates, powers-of-attorney, and any individual or entity that could be jointly liable with Defendant ("Released Parties") from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorney's fees, damages, actions or causes of action which are alleged, or could have been alleged based on the facts, circumstances, and primary rights at issue asserted in the operative Complaint filed in this Action, and arising during the Class Period, including without limitation to, claims for failure to reimburse business expenses, declaratory relief, injunctive relief, claims for penalties of any nature whatsoever arising out of the Released Claims, or any other benefit claimed on account of allegations and claims which are related to the allegations and claims asserted in the operative Complaint filed in this Action and thus could have been asserted. This release shall apply to claims arising at any point during the Class Period. The release shall exclude claims for vested benefits, wrongful termination, unemployment insurance, disability, workers' compensation, and claims outside of the Class Period.

Even if you choose to opt out of the Settlement, upon the Court's final approval of the Settlement and entry of final judgment, you will be deemed to have released Defendant and the Released Parties from any and all claims for penalties under the California Private Attorneys' General Act, Labor Code section 2698 *et. seq.* based on the facts, circumstances, and primary rights at issue in the operative Complaint filed in this Action, and arising during the PAGA Period, including without limitation to, claims for failure to reimburse business expenses. This release shall apply to claims arising at any point during the PAGA Period. The release shall exclude claims for vested benefits, wrongful termination, unemployment insurance, disability, workers' compensation, and claims outside of the PAGA Period.

14. Do I have a lawyer in this case?

The Court has appointed two law firms, HammondLaw, P.C. and The Jhaveri-Weeks Firm ("Class Counsel"), to represent you and all other Class Members in this Lawsuit. Class Counsel will be compensated from the Gross Settlement Amount as discussed in this Class Notice. If you want to be represented by your own lawyer, you may hire one at your own expense.

15. How will the lawyers be paid?

Class Counsel will ask the Court to approve payment of up to 40% of the Gross Settlement Amount (*i.e.*, up to \$370,000) to them for attorneys' fees, as well as costs in an amount not to exceed \$30,000. The fees will pay Class Counsel for investigating the facts, litigating the case, and negotiating and finalizing the Settlement. Defendant has agreed not to oppose Class Counsel's application for these fees and expenses. The Court may choose to award less than the amount requested by Class Counsel. All other payments to the Class Representative and to the Settlement Administrator also come from the balance of the Gross Settlement Amount, and must be approved by the Court.

16. How can I opt out of this Settlement?

You can opt out of this Settlement and retain your rights instead of receiving a payment under this Settlement (except that you cannot, by law, opt out of the Settlement of PAGA claims if that settlement is approved by the Court). To do so, you must prepare and submit in writing a signed and dated statement that you want to be excluded from the Settlement. You must include: your full name, signature, address, last four digits of your Social Security number, the case name, and a clear statement that you seek to be excluded from the Settlement. Your written statement must be mailed to the Settlement Administrator, [TBD], and be postmarked no later than [RESPONSE DEADLINE], or it will not be considered and you will still remain a Settlement Class Member, and be bound by the Settlement. [TBD]'s address is listed in Section 23, below.

17. How do I tell the Court that I do not agree with the Settlement?

If you do not opt out, you can object to the Settlement if you do not agree with it. You should give reasons why you think the Court should not approve the Settlement and the Court will consider your views. To object, and to have the Court hear your views, you should send a letter saying that you object to the Settlement and give your reasons. Be sure to include your full name, address, last four digits of your Social Security number, the case name and case number, and provide both the legal and the factual reasons you object to the Settlement, and indicate whether you intend to appear at the Final Approval hearing. Your objection is to be mailed to the Settlement Administrator, [TBD], and must be postmarked no later than [RESPONSE DEADLINE]. [TBD]'s address is listed in Section 23, below.

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you do not have to appear at the hearing.

18. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval hearing on [HEARING DATE] in Department 7 of the Contra Costa County Superior Court. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections and they have been properly submitted, the Judge will consider them. The Judge will listen to people who attend the hearing and who do not opt out. The Court will also decide how much to award Class Counsel for their attorneys' fees and litigation costs. At or after the hearing, the Court will decide whether to approve the Settlement. We do not know how long this decision will take. This hearing may be rescheduled by the Court without further notice to you.

19. Do I have to come to the hearing?

No. Class Counsel will answer any questions that the Judge may have. But you are welcome to attend. If you sent an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but that is not required.

20. May I speak at the hearing?

If you wish to speak at the Final Approval hearing, you may appear by telephone at the scheduled hearing. You cannot speak at the hearing if you have excluded yourself from the Settlement. To learn how to appear by telephone at the hearing, you may contact Class Counsel or the Settlement Administrator (*see* Sections 22 and 23 below), or you may visit the Court's online docket for this case to view any instructions by the Court for appearing at the hearing telephonically (*see* Section 22 for how to access the online docket).

21. What happens if I do nothing at all?

You will be a member of the Settlement Class. You will receive a Settlement Payment calculated as explained in Section 11, above, and you will be bound by the release set forth in Section 13, above. Once the Settlement is finally approved by the Court, and the necessary deadlines have passed, you will be mailed your Settlement check.

GETTING MORE INFORMATION

22. Are there more details about the Settlement?

This Class Notice summarizes the proposed Settlement. You may call or contact the Settlement Administrator or Class Counsel if you would like more information about the case. The pleadings and other records in this Lawsuit, including the Settlement Agreement and the Preliminary Approval Motion discussing it in detail, may be obtained on the Settlement website here: url.com. The pleadings and other records in this Lawsuit may also be obtained by mailing a records request form to the Contra Costa County Superior Court, along with a stamped self-addressed envelope, and a check or money order to cover fees to process the request. The records request form and more information is available on the Contra Costa County Superior Court's website, at <https://www.cc-courts.org/civil/records.aspx>. Class Counsel may be reached at:

THE JHAVERI-WEEKS FIRM

William Jhaveri-Weeks (SBN 289984)

wjw@jhaveriweeks.com

Ally N. Girouard (SBN 336625)

ag@jhaveriweeks.com

351 California Street, Suite 700

San Francisco, CA 94104

Tel.: (415) 463-0898

Fax: (415) 367-1439

HAMMONDLAW, P.C.

Julian Hammond (SBN 268489)

jhammond@hammondlawpc.com

Polina Brandler (SBN 269086)

pbrandler@hammondlawpc.com

Ari Cherniak (SBN 290071)

acherniak@hammondlaw.com

11780 W. Sample Road, Suite 103

Coral Springs, FL 33065

Tel.: (310) 601-6766

Fax: (310) 295-2385

23. How do I get more information?

You may visit www.[website], call the Settlement Administrator at [Phone number], or Class Counsel above, or write to the Settlement Administrator at [mailing address].

PLEASE DO NOT CONTACT THE COURT OR NATIONAL UNIVERSITY WITH INQUIRIES.

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CLASS NOTICE

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QUESTIONS? VISIT WWW. .COM OR CALL CPT GROUP, INC. AT

Burleigh v. National - Final Settlement Agreement - Plaintiff signatures

Final Audit Report

2022-01-13

Created:	2022-01-13
By:	William Jhaveri-Weeks (wjw@jhaveriweeks.com)
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