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13 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
14 **COUNTY OF LOS ANGELES**

15 **ARYTON COSTA**, individually and on behalf
16 of all others similarly situated,

17 Plaintiff,

18 vs.

19 **UNIVERSITY OF ANTELOPE VALLEY**, a
20 California Limited Liability Company,

21 Defendant.

Case No.: 21STCV18531

**DECLARATION OF JULIAN HAMMOND
IN SUPPORT OF PLAINTIFF'S
UNOPPOSED MOTION FOR APPROVAL
OF PAGA SETTLEMENT PURSUANT TO
LABOR CODE § 2699(I)**

Date: May 11, 2022

Time: 10:00 a.m.

Dept.: 9

Hon. Yvette M. Palazuelos

Complaint Filed: May 14, 2021

1 I, Julian Hammond, declare as follows:

2 **I. INTRODUCTION**

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

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

7 3. I am the principal of the law firm HammondLaw, P.C. (“HammondLaw” or “Class
8 Counsel”) and counsel for the named Plaintiff Aryton Costa (“Plaintiff”) in his capacity as representative
9 plaintiff on behalf of: (a) the 55 adjunct instructors (“Aggrieved Employees” or “AEs”) employed by
10 University of Antelope Valley (“UAV” or “Defendant”) in California from August 6, 2018 through the
11 date that this Settlement is approved (the “PAGA Period”), and (b) the 54 individual other than AEs
12 employed by Defendant in California from April 6, 2020 until August 31, 2021.

13 4. I submit this declaration in support of Plaintiff’s Unopposed Motion for Approval of
14 Proposed PAGA Settlement Pursuant to Labor Code § 2699(I).

15 5. A true and correct copy of the executed Settlement Agreement is submitted to the Court
16 as Exhibit 1 to the Proposed Order Granting Plaintiff’s Unopposed Motion for Approval of Proposed
17 PAGA Settlement.

18 **II. ATTORNEY EXPERIENCE**

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

28 7. I graduated from the University of South Wales with a Bachelor of Commerce in 1995,
from the University of Technology in Sydney with a Bachelor of Law *summa cum laude* in 1999, and
from New York University School of Law with a Masters of Law in 2001. I founded HammondLaw in

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

1 2010. Since the founding of HammondLaw, I have devoted a substantial percentage of my practice to
2 litigating cases involving wage and hour violations, the bulk of these being class actions. My firm has
3 represented tens of thousands of employees in wage and hour class actions under California law and in
4 California courts.

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

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

18 10. Dr. Arie Michelsohn, counsel to the firm, also assisted me in this case during the
19 settlement/negotiations stage of the case. Dr. Michelsohn has over 20 years of litigation experience. He
20 earned his Bachelor's Degree from Columbia University in 1982, his Ph.D. from the California Institute
21 of Technology in 1992, and his J.D., with High Honors, Order of the Coif, from the George Washington
22 University Law School in 1998. He is a former law clerk to the Honorable Raymond C. Clevenger, III,
23 Circuit Judge, United States Court of Appeals for the Federal Circuit. Since 1999, Dr. Michelsohn's law
24 practice has primarily focused on complex litigation.²

25
26 ² 2.4 hours were also billed to this case by Adrian Barnes, another associate at HammondLaw. Mr. Barnes
27 graduated from the University of California, Berkeley, in 2001, and from Columbia Law School, in 2007,
28 where he was a member of the *Columbia Law Review* and received the Emil Schlesinger Labor Law Prize.
Since graduating from law school, Mr. Barnes has spent the majority of his career representing the interests
of consumers, employees, and union members.

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

A. HammondLaw's Experience Representing Adjuncts

12. This is one of a series of cases brought by HammondLaw, which has been representing adjunct instructors in similar unpaid wage cases since 2016. Since 2016, my firm has secured court-approved settlements in 20 wage and hour class actions against universities throughout California.

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

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

III. OVERVIEW OF THE CASE AND SETTLEMENT NEGOTIATIONS

15. Prior to providing Defendant with notice pursuant to Labor Code § 2699.3(a)(1) and (c)(1) ("PAGA Notice") and the filing of the Complaint, Plaintiff's Counsel investigated and researched the facts and circumstances underlying the pertinent issues and applicable law. This investigation and research included detailed discussions and interviews with Plaintiff and other part-time adjunct instructors about their job duties and Defendant's compensation policies, as well as reviewing Plaintiff's teaching contracts. Plaintiff's Counsel further investigated Defendant's organizational and operational structure in California and the manner in which it applies and enforces its uniform employee policies. As a result of this investigation, Plaintiff's Counsel determined that Plaintiffs' PAGA claims stemmed from Defendant's systematic corporate policies, and that Plaintiff's claims were well suited for representative action adjudication.

16. On April 22, 2021, Plaintiff sent a PAGA Notice to the LWDA and Defendant alleging violations of Labor Code §§ 1194, 1194.2, 226.2, 226.7, 201-203, and 2802. Plaintiff sent two amended PAGA notices. The first, sent on November 2, 2021, clarified Labor Code §§ 201-203 allegations and alleged that the PAGA Period began on April 6, 2022 (not April 22, 2020) due to Emergency Rule 9. The second amended PAGA notice, sent on December 1, 2021, added an allegation of failure to provide off duty meal periods in violation of Labor Code § 512.

1 17. On May 14, 2021, Plaintiff filed his class action Complaint for: (1) failure to pay wages
2 for all hours worked under Labor Code §§ 1194, 1194.2, 226.2 and IWC Wage Order No. 4-2001 § 4; (2)
3 failure to authorize and permit rest breaks and pay missed rest break premiums under Labor Code
4 §§ 226.7, 226.2 and IWC Wage Order No. 4-2001 § 12; (3) failure to issue accurate itemized wage
5 statements under Labor Code § 226(a); (4) failure to pay all wages due at the time of discharge from
6 employment under Labor Code §§ 201-203, (5) failure to reimburse business expenses under Labor Code
7 § 2802; (5) and (6) Unfair, Unlawful, or Fraudulent Business Practices under Business and Professions
8 Code § 17200.

9 18. Shortly after the Complaint was filed, the parties agreed to attend early mediation and to
10 an informal exchange of documents and information.

11 19. Defendant subsequently informed Plaintiff that of the approximately 55 Aggrieved
12 Employees, who are part-time adjunct instructors, 51 entered into arbitration agreements with Defendant
13 with a class action waiver, and 52 of the approximately 54 Reimbursement Aggrieved Employees, entered
14 into arbitration agreements with a class action waiver.

15 20. As a result, the parties focused on assessing the value of the PAGA penalties claim, as
16 opposed to the class claims.

17 21. In aid of mediation, Defendant provided the number of Aggrieved Employees (“AEs”)
18 (approximately 55) and the number of pay periods (approximately 950) they worked between April 6,
19 2020 and November 10, 2021. The PAGA Period is defined as April 6, 2020 to the date the Court grants
20 approval.³ Defendant also provided the number of Reimbursement Aggrieved Employee (“AEs”) (54)
21 and the number of pay period they worked (approximately 781) during the Reimbursement PAGA Period
22 (April 6, 2020 to August 31, 2021).

23 22. Defendant produced Plaintiff’s personnel file, including his contracts and wage statements;
24 payroll calendar, UAV’s faculty pay scale applicable to part-time adjunct instructors in 2019, 2020, and
25 2021; several versions of the Employee Handbook applicable during the PAGA Period and faculty job
26 descriptions; a sample of contracts issued to part-time adjunct instructors. We also conducted our own
27 investigation, including researching publicly available information and interviewing aggrieved
28 employees.

³ As discussed below, if the number of pay periods exceeds 950 by more than 10% by the time the Court approves the Settlement, the 75% of the GSA allocated to AEs will increase proportionately. *See* Settlement Agreement § III.3.

1 23. Plaintiff's Counsel thoroughly analyzed the information and documents produced as part
2 of an informal exchange of documents, sought additional information and clarification after reviewing the
3 documents initially produced, and we also conducted interview of potential aggrieved employees to gather
4 facts and additional documents. Based on our analysis and investigation we were able to assess the
5 strength and weaknesses of Plaintiff's case and we were sufficiently informed to arrive at a realistic
6 settlement valuation of this Action.

7 24. From the information produced as part of an informal exchange of documents, along with
8 our own investigation, we ascertained that University of Antelope Valley is a small, for-profit university
9 in Lancaster, California that offers masters, bachelors, and associate degrees as well as certificate and
10 continuing education programs. Its total enrollment is approximately 900 across all of its programs.
11 Plaintiff alleged that Defendant misclassified AEs as exempt employees and as a result failed to afford
12 them protection to which non-exempt employees are entitled under the labor code, including pay for all
13 hours worked, accurate itemized wage statements, rest and meal breaks, and also failed to pay them all
14 wages due at the time of discharge from employment. Defendant also failed to reimburse AEs and its
15 other employees (RAEs) for the home internet expenses they incurred as a result of being required to work
16 remotely from home during the Covid-19 pandemic.

17 25. The parties participated in an all-day mediation session, with the assistance of a skilled and
18 well-regarded mediator, Marc Feder. After a full day of mediation, the parties reached agreement on the
19 basic terms of the PAGA settlement, and in due course entered into the formal settlement agreement that
20 is now submitted to the Court for approval.

21 26. At mediation, Defendant vigorously contended that Plaintiff's class claims were barred by
22 the class action waiver included in the arbitration agreement that the vast majority of adjuncts and
23 employees entered into as part of their employment.

24 27. Following mediation, the parties filed a Joint Stipulation to file Plaintiff's First Amended
25 Complaint dismissing class claims and adding a PAGA cause of action. The Court granted the Joint
26 Stipulation on December 15, 2021 and Plaintiff filed the First Amended Complaint the same day, deleting
27 the class claims and adding a claim for civil penalties pursuant to PAGA on behalf of AEs based on the
28 Labor Code violations asserted in the PAGA Notice.

 28. In the FAC, Plaintiff alleged that the part-time adjunct instructors:

- a. were non-exempts piece-rate workers entitled to be paid for all hours worked and to be paid separately from the piece and hourly for non-productive work (i.e., work that was not directly related to the piece). Plaintiff alleged that the pay set out in adjunct instructors' contracts only compensated them for the teaching of the course (i.e. the "piece") and did not

1 compensate them for the nonproductive tasks they performed outside the classroom
2 including preparing syllabi, meeting with students outside the classroom including during
3 office hours, creating course materials, and grading in violation of Labor Code §§ 1194,
4 226.2;

5 b. even if not considered piece-rate workers, their compensation only covered the
6 hours of classroom instruction, and not all the work they performed outside the classroom.

7 c. as non-exempt piece-rate workers, were entitled to paid off-duty rest breaks on days
8 they worked 3.5 hours or more in a row, yet Defendant did not pay them separately from
9 the piece and hourly for rest breaks. Even if they were not piece-rate workers, Defendant
10 was required yet failed to maintain a rest break policy permitting and authorizing adjuncts
11 to take off-duty rest breaks and maintain policies and/or practices that impeded their ability
12 to take off-duty breaks, such as expecting and/or requiring them to be available to students
13 during classroom breaks and before and after class for questions in violation of Labor Code
14 §§ 226.7, 226.2.

15 d. were entitled to off-duty meal breaks on days that they worked 5 hours or more in
16 a row, yet Defendant did not maintain a meal break policy applicable to AEs in violation of
17 Labor Code § 512;

18 e. were entitled to wage statements that included their hours worked, applicable
19 hourly rate and piece rate information pursuant to Labor Code §§ 226(a), 226.2, but the
20 wage statements Defendant issued to them did not contain this information for their teaching
21 work;

22 f. were employed on a semester-by-semester basis and were discharged from their
23 employment at the end of every contract/every semester. As a result, AEs were entitled to
24 be paid all wages due at the time of discharge every semester. However, Defendant followed
25 its regular payroll calendar in issuing final wages, which resulted in final wages being paid
26 several days late. Additionally, Defendant failed to pay all wages due at the time of
27 discharge by failing to pay for nonproductive time and premium pay for missed rest and
28 meal breaks.

29. Plaintiff also alleged that AEs as well as all other employees who were required to work
remotely from home during the Covid-19 pandemic incurred home office expenses in carrying out their
job duties for Defendant, for which Defendant failed to reimburse them in violation of Labor Code § 2802.

IV. PAGA PENALTIES ANALYSIS

30. Defendant could have argued however, relying on two recent Court of Appeals decisions – *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008) and *Gunther v. Alaska Airlines*, 72 Cal. App. 5th 334, 355-356 (2021), and a recent Ninth Circuit Court of Appeals decision, *Bernstein v. Virgin Am., Inc.*, 2021 U.S. App. LEXIS 6641, *35-36 (9th Cir. Mar. 8, 2021) - that subsequent penalty rate of \$200 could only be assessed when an employer receives notice of its violation by the LWDA or a court, and that such penalties were not available to Plaintiff because Defendant had not been put on notice of the violations Plaintiff alleged it committed. Accordingly, Plaintiff calculated penalties based on the \$100 initial violation rate for all the violations.

a. Unpaid Wages - Labor Code §§ 1194, 226.2

31. Plaintiff contended that AEs were non-exempt piece-rate employees because they did not earn the minimum salary required to be exempt under IWC Wage Order No. 4, § 1(A) and because they were paid a flat amount per course taught (i.e., piece being the flat course pay). Plaintiff contended that as a result, AEs were entitled to minimum wage for all hours worked and separate and hourly pay for nonproductive time. *See* Lab. Code §§ 1194, 226.2. Plaintiff contends that AEs were required to perform tasks outside the classroom hours which were nonproductive and therefore not covered by AEs' course compensation, such as syllabi preparation, meeting with students outside the classroom, and grading.

32. **Penalties:** Labor Code §§ 1194, 226.2 do not provide a penalty. Therefore, default PAGA penalties under Labor Code § 2699(f)(2) apply, and Plaintiff used the \$100 initial pay period violation rate to calculate penalties. Between April 6, 2020 and November 10, 2021, AEs worked a total of 950 pay periods. The PAGA Period for the claims of the AEs runs from April 6, 2020 to the date the Court enters an Order approving the Settlement. If the number of pay periods increased by more than 10% by the end of the PAGA Period (i.e. date of the Court's Approval Order), the 75% of the GSA allocated to the AEs will increase proportionately. *See* Settlement Agreement § III.3. Accordingly, to calculate PAGA penalties, Plaintiff used 1,045 pay periods (950 + 10% of 950), resulting in maximum penalties of **\$104,500**.

33. **Merits and Manageability Defenses:** Defendant could have argued that AEs were properly classified as exempt because the minimum salary required under the Wage Order No. 4, § 1(a)(3)(d) can be prorated for part-time work and AEs did earn two times the minimum wage for each hour that they worked. Although no California Court of Appeal has opined on the issue, the Superior Court in *Gola v. University of San Francisco* found that the better argument as to the minimum salary required for professional exemption in California was that the minimum salary could not be prorated for part-time work, and had to be calculated based on 40 hours per week even if an employee worked fewer

1 hours. Defendant also could have argued that the course compensation it paid to AEs covered all the
2 work that they were required to complete in order to successfully teach a course, and that their
3 compensation was not a piece rate because they could not earn more during each term by e.g. working
4 faster to produce more units. Defendant also could have argued that whether AEs performed non-
5 productive work during any pay period would lead to manageability issues. While Plaintiff believes his
6 claims are strong on the merits, Plaintiff also believes that some discount is warranted based on these
7 potential defenses. Plaintiff applied an overall 35% discounts for these risks, reducing the value of this
8 claim to **\$67,925**.

9 **b. Failure to Provide Paid Rest Breaks – Labor Code § 226.7**

10 34. Plaintiff contended that Defendant misclassified AEs as exempt and did not maintain a
11 rest break policy applicable to AEs. As such, Defendant failed to permit and authorize AEs to take rest
12 breaks when working 3.5 hours or more in a row as required by Labor Code § 226.7. Defendant also did
13 not pay separately and hourly for rest breaks as Labor Code § 226.2 requires employers pay to their piece
14 rate employees.

15 35. **Penalties:** Default PAGA penalties apply to violations of Labor Code §§ 226.7, 226.2.
16 Under the aggressive assumption that every single AE was eligible for a rest break during every single
17 pay period and missed a break in every single pay period, Plaintiff calculated Defendant's total possible
18 exposure on this claim as **\$104,500**, calculated in the same way described in Paragraph 32.

19 36. **Merits and Manageability Defenses:** Defendant could have argued that AEs'
20 compensation was not a piece rate, and that many of the AEs never taught classes that were that 3.5-hours
21 long and even those who did, were able to freely take rest breaks during classroom breaks. Defendant
22 also could have argued that whether AEs missed rest breaks during any pay period would lead to
23 manageability issues because the only way of determining whether AEs were able to take breaks would
24 have been through mini-trials involving each AE. Plaintiff believed the risks on the merits and
25 manageability merited a 50% discount, reducing the expected value of the claim to **\$52,250**.

26 **c. Failure to Provide Meal Periods – Labor Code § 512**

27 37. Plaintiff contended that Defendant did not maintain a meal break policy applicable to AEs
28 and as a result failed to provide them with off-duty meal periods when they worked more than 5 hours in
a row and failed to pay them premium pay in lieu thereof, in violation of Labor Code § 512.

38. **Penalties:** Plaintiff calculated PAGA penalties on the assumptions that AEs suffered a
meal break violation every pay period during the PAGA Period, for a total possible exposure of **\$104,500**.
This is calculated in the same way described in Paragraph 32.

1 39. **Merits and Manageability Defenses:** In addition to arguing that the Court could have
2 found that AEs were properly classified as exempt, Defendant also could have argued that very few
3 classes were 5 hours or longer and a violation did not occur during every single pay period. Further,
4 Defendant could have argued that whether AEs missed meal periods during any pay period would lead to
5 manageability issues. Plaintiff believed this merited a 60% discount on the merits, reducing the expected
6 value of the claim to **\$41,800**.

7 **d. Inaccurate Wage Statements – Labor Code § 226(a)**

8 40. Plaintiff contended that as a result of misclassifying AEs as exempt and failing to treat
9 them as piece-rate employees, Defendant failed to track their hours worked and failed to issue accurate
10 itemized wage statements containing their hours worked and applicable hourly rates, as well as the
11 number of pieces earned and the piece rate, in violation of Labor Code § 226(a).

12 41. **Penalties:** Plaintiff calculated Defendant's maximum liability for this claim as **\$104,500**
13 applying the default penalty under Lab. Code § 2699(f)(2).

14 42. **Merits Defenses:** Because the claim is derivative, the same discounts as apply to the claim
15 for unpaid wages (35%), resulting in risk-adjusted exposure of **\$67,925**.

16 **e. Failure to Pay Wages Due at Separation - Labor Code §§ 201-203**

17 43. Plaintiff contended that Defendant employed AEs on a semester-by-semester basis and
18 they were therefore discharged at the end of each academic term. Defendant was required to pay them all
19 wages due at the time of discharge, but as a result of following its regular payroll calendar often paid
20 them wages several days after the end of the semester i.e., their discharge date. Plaintiff also contended
21 that as a result of Defendant's failure to pay AEs for all hours worked and to pay premium pay for missed
22 rest and meal breaks, Defendant also failed to provide full compensation to certain AEs in their final
23 paychecks, in violation of Labor Code §§ 201-03.

24 44. **Penalties:** AEs taught during approximately 165 terms during the PAGA Period. Thus,
25 Plaintiff calculated penalties at \$100 for each of the terms (i.e. each time Plaintiff contended AEs were
26 discharged), for total penalties of **\$16,500**.

27 45. **Merits Defenses:** Defendant could have argued based on the decision in *Elliot v. Spherion*
28 *Pac. Work, LLC*, 572 F. Supp. 2d 1169, 1176-77 (2008) that AEs were not discharged at the end of each
contract because they maintained a continuous relationship with the Defendant and were offered to teach
courses throughout each academic year until they left employment or were officially terminated.
However, Plaintiff believes that he has a strong claim because Defendant's written policies provide that
employment of adjunct instructors terminates at the end of their contracts that are award for a fixed period

1 of time. Therefore, Plaintiff believed that only a 30% discount was warranted, bringing the risk-adjusted
2 exposure down to **\$11,550**.

3 **f. Expense Reimbursement Claim - Labor Code § 2802**

4 46. Plaintiff contended that AEs and RAEs were required to work remotely from home during
5 the Covid-19 pandemic, and as a result incurred home offices expenses associated with the use of their
6 computers, email, and/or videoconferencing, and mobile phones. By failing to reimburse AEs and RAEs
7 for these expenses incurred in carrying out their job duties for Defendant, Defendant violated Labor Code
8 § 2802.

9 47. **Penalties:** Plaintiff calculated Defendant's maximum liability for this claim for AEs as
10 **\$104,500** (as in paragraph 32) and for RAEs as **\$78,100** based on the 781 pay periods they worked during
11 the Reimbursement PAGA Period.

12 48. **Merits and Manageability Defense:** Defendant could have asserted that Labor Code §
13 2802 does not require employers to reimburse expenses on semi-monthly basis or each pay period and
14 that it could have, as other universities do, reimbursed AEs and RAEs on a monthly or even
15 quarterly/semester basis. Accordingly, Defendant could have argued that Plaintiff's calculations of PAGA
16 penalties based on each pay period worked during the PAGA Period and Reimbursement PAGA Period
17 is inflated. Defendant could have also contended that whether the expenses incurred by AEs and RAEs
18 were reasonable, and whether Defendant was aware that AEs and RAEs incurred such expenses, will vary
19 on a case-by-case basis, and would lead to manageability issues. Based on these contentions, Plaintiff
20 believed a 65% discount was reasonable, bringing the risk-adjusted exposure to **\$33,250** on AEs' claims
21 and to **\$27,335** on RAEs' claims.⁴

22 **g. Risk of Reduction of Penalties by the Court**

23 49. Plaintiff took into account several risks that could have dramatically reduced the recovery
24 even if they prevailed on their claims. First, the Court has broad statutory discretion to reduce the penalties
25 assessed. Cal. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt.*, 203 Cal. App. 4th 1112,
26 1135-36 (2012) (affirming reduction of PAGA penalties and emphasizing broad discretion).

27 ⁴ The Settlement Agreement also releases claims for overtime wages and failure to keep accurate and
28 complete time and payroll records. As these claims are derivative and occurred during the same pay
periods as the claims for unpaid wages statements/rest breaks/inaccurate wage statements, and no class
was schedules for more than 8 hours (and as any potential unpaid overtime allegation is based on the
instructor working before and after class), Plaintiff does not value these claims separately as they are
unlikely to result in any additional penalties.

1 50. In a recent case, we prevailed on a PAGA claim at trial for a class of adjunct professors,
2 but the Court only awarded 15% of the maximum PAGA penalties. *See Gola v. Univ. of San Francisco*,
3 CGC-18-565018 (Post-Trial Stmt. of Decision, July 21, 2020). There is significant risk of a voluntary
4 reduction here. Unlike defendant in the case in which the court awarded only 15% of the maximum PAGA
5 penalties, Defendant here could have argued that it attempted to comply by listing on wage statements
6 issued to AEs hours and hourly rates for non-teaching work that was paid by the hour, and by listing
“quantity” of “1,” and “rate” earned during the pay period for the quantity.

7 51. Second, the Court might not permit “stacking” of PAGA penalties – *i.e.*, not award more
8 than one PAGA penalty for each employee in each pay period. On the one hand, Labor Code § 2699
9 implies that a separate civil penalty may be recovered for each violation of the Labor Code. *See* Labor
10 Code § 2699(f) (stating “*a* civil penalty for *a* violation”) (emphasis added). On the other hand, Labor
11 Code § 2699(g)(1) states that “an aggrieved employee may recover *the* civil penalty described in
12 subsection (f) . . . on behalf of himself or herself and other current or former employees against whom *one*
13 *or more of the alleged violations* was committed” (emphasis added). Some courts have impliedly allowed
14 stacking of PAGA penalties for jurisdictional purposes. *See, e.g., Schiller v. David’s Bridal, Inc.*, 2010
15 U.S. Dist. LEXIS 81128, at *27 (E.D. Cal. July 14, 2010) (defendant could aggregate PAGA penalties to
16 establish amount in controversy). Others have denied it. *See, e.g., Castillo v. ADT, LLC*, 2017 U.S. Dist.
LEXIS 10579, at *11 (E.D. Cal. Jan. 24, 2017) (declining to stack penalties). Even if the Court interpreted
the statute to permit stacking, the Court could decline to stack penalties as a matter of discretion.

17 52. Third, the Court would likely take into account Defendant’s deteriorating financial position
18 due to losses suffered in the several years prior to Covid-19, as well as due to the unprecedented economic
19 effects of Covid-19, and that if the maximum penalties of over \$363,000 were to be imposed, Defendant
20 would not be able to satisfy the judgment and continue its operations. For these three reasons, even if
21 Plaintiff were to prevail on the merits, there is substantial uncertainty as to the ultimate award for PAGA
penalties.

22 **h. Other Defenses Warranting a Discount**

23 53. Defendant could also argue that Plaintiff’s PAGA claim was barred because Plaintiff left
24 employment more than one year prior to the submission of his PAGA Notice. Plaintiff’s position was that
25 despite the fact that his last course ended on March 4, 2020 (more than one year prior to the April 22,
26 2021), his contract end date was April 29, 2020 and his PAGA notice was therefore timely. Additionally,
27 Plaintiff contended that his right to waiting time penalties was triggered on April 29, 2020 based on
28 Defendant’s alleged failure to pay him all wages earned during his employment. Further, Plaintiff
contended that his PAGA claims were stayed from April 6, 2020 until October 1, 2020 under the

Emergency Rule 9. However, Plaintiff faced significant risk if the Court would find that his employment ended on March 4, 2020, the date his last course ended, and that he had no standing to bring a PAGA lawsuit.

i. Comparison of PAGA Settlement to Potential Recovery Absent Settlement

54. Here, the \$150,000 PAGA settlement is a very substantial recovery for only 54 AEs, and 55 RAEs on whose behalf only one claim is alleged, given the risks described above. If the Court permitted stacking the risk-adjusted recovery (*i.e.*, the sum of the risk-adjusted numbers above) would be **\$268,785**. However, if the Court did not permit stacking, the risk-adjusted expected recovery is at most **\$95,260** (\$67,925 for the AEs and \$27,335 for the RAEs). AEs and RAEs might have been defeated on some or all of their claims, resulting in a recovery of less than the PAGA settlement of \$150,000. Theoretically, if the AEs/RAEs prevailed on *every* claim as to *every* pay period of *every* AE/RAEs *and* the Court allowed stacking, *and* the Court did not exercise its discretion to reduce the maximum penalties, then the full exposure in this case is \$363,250, but that outcome is highly unlikely, and Plaintiff's counsel believe it would be unreasonable to continue this litigation in hopes of achieving that outcome. The settlement amount compares reasonably to the realistic, risk-adjusted potential recovery if Plaintiff were to proceed with his claims.

55. Courts have repeatedly approved smaller PAGA allocations. *See, e.g., Starks v. Vortex Indus., Inc.*, BC590955 (L.A. Super. Ct.) ("*Starks*") (Oct. 24, 2017 order approving \$35,000 in civil penalties, \$10,000 as service award, and \$630,000 in attorneys' fees and costs, submitted as Ex. 1. to Hammond Decl.); *Magadia v. Wal-Mart Assocs.*, 384 F. Supp. 3d at 1101, citing, among others, *Ceja-Corona v. CVS Pharm., Inc.*, 2015 U.S. Dist. LEXIS 5118 (E.D. Cal. Jan. 14, 2015) (\$10,000 PAGA penalties in settlement of \$900,000), recommendation adopted, 2015 U.S. Dist. LEXIS 25730 (E.D. Cal. Mar. 3, 2015); *Nen Thio v. Genji, LLC*, 14 F. Supp. 3d 1324, 1330 (N.D. Cal. 2014) (\$10,000 PAGA penalties, \$1.25m settlement); *Davis v. Cox Commc'ns Cal., LLC*, 2017 U.S. Dist. LEXIS 63514, at *3 (S.D. Cal. Apr. 26, 2017) (approving \$4,000 PAGA allocation in \$275,000 settlement).

56. A total of \$80,906.81 will be available for PAGA penalties after deduction of fees and costs. The PAGA allocation per employee, even after deduction of fees and costs, will be on average \$1,103.27 per AEs and \$374.57 per RAE. The 25% share of the PAGA penalty paid to employees, allocated 3/4 to the AEs and 1/4 to the RAEs, will average \$275.82 for the AEs, and \$93.64 for the RAEs. This will confer a meaningful benefit on employees and the LWDA, especially in light of the fact that are not releasing their substantive Labor Code claims and will remain free to pursue those claims

1 57. At the same time Plaintiff submitted this Motion to the Court, I submitted a copy of the
2 Settlement Agreement, as well as the hearing information for this motion, to the LWDA via its website.
3 A proof of service on the LWDA is filed herewith.

4 **The Risk, Expense, Complexity, and Likely Duration of Further Litigation**

5 58. Plaintiff has determined that each labor code violations has merit as to some or all AEs and
6 RAEs and is supported by evidence. Defendant has strongly asserted that there are valid defenses to those
7 claims and denied any liability in the action, but has stated that it desired to settle to avoid the expense
8 and business disruption associated with further legal proceedings. In addition to the defenses outlined
9 above, Defendant also pointed to the very substantial financial losses it suffered in the years just prior to
10 Covid-19, and its continuing financial hardship resulting from the COVID-19 pandemic.

11 59. Plaintiff recognizes that further litigation poses significant risks and would result in
12 significant additional costs and delay including further discovery, motion practice, and trial preparation.
13 Such litigation would result in significant additional out-of-pocket expenses and attorneys' fees and could
14 delay the final outcome by several years and put AEs and RAEs at a risk of recovering less than the
15 settlement amount, or nothing at all.

16 60. The risk of recovering less than the settlement amount, or recovering nothing at all,
17 ultimately materialized when within approximately one month of the mediation in this case, the United
18 States Supreme Court granted certiorari in *Viking River Cruises, Inc. v. Moriana*, 2020 Cal. App. Unpub.
19 LEXIS 6045 (2020), *cert. granted*, 142 S.Ct. 734 (2021). *Viking* asks whether the Federal Arbitration Act
20 ("FAA") requires the enforcement of bilateral arbitration agreements providing that an employee cannot
21 raise representative claims, including PAGA claims. In *Viking River Cruises*, the Supreme Court will
22 decide whether its 2018 decision in *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612 (2018), which upheld
23 the use of class and collective action waivers in employment arbitration agreements, effectively overruled
24 the California Supreme Court's 2014 decision in *Iskanian v. CLS Transportation Los Angeles, LLC*, 59
25 Cal. 4th 348 (2014), which held that arbitration agreements waiving the right to bring PAGA
26 representative actions are unenforceable. This case promises to be the most consequential PAGA case in
27 nearly a decade and could decide whether, as here, Plaintiff, AEs and RAEs who signed arbitration
28 agreement are preempted from bringing PAGA claims.

29 61. Similarly, a proposed ballot initiative for November 2022 entitled the "Fair Pay and
30 Employer Accountability Act" will take enforcement out of the hands of private "aggrieved" employees
31 and their attorneys by eliminating the recovery of civil penalties through a representative action, and would
32 place greater enforcement responsibilities on the DLSE and by requiring that the state sufficiently fund
33 the DLSE's mandates and hire more Labor Commissioners.

62. These developments dramatically underscore the contingent risks inherent in class and representative action litigation. Instead, this settlement provides an early resolution of the dispute, and AEs and RAEs will obtain a recovery in the relatively near future if the settlement is finally approved. This settlement provides an early resolution of the dispute and ensures that AEs, RAEs, and the LWDA, obtain a recovery on their PAGA claims.

The Extent of Discovery Completed and Stage of Proceedings

63. As discussed above, the Parties agreed to an informal exchange of documents in aid of mediation. Plaintiff's Counsel spent a significant amount analyzing documents and data produced by Defendant, requesting clarification and further data and information after receiving the initial set of documents, and independently investigating Plaintiff's claims by interviewing potential class members, and conducting online research among other things, and negotiating and finalizing this Settlement and related documents.

Views of Experienced Counsel Support the Settlement's Reasonableness

64. The Settlement is the result of extensive negotiations conducted at arm's length and informed by substantial factual and legal investigation. Throughout this case, the Parties have been represented by counsel with extensive experience in California wage and hour litigation. My firm has represented adjunct instructors in many class and PAGA cases, and were particularly well situated to value this case and assess its risks.

65. I consider the settlement to be fair, reasonable, and adequate. The settlement funds will be paid directly to AEs and RAEs based on the number of pay periods worked during the PAGA Period and the Reimbursement PAGA Period, respectively. SA at § III.6. There is no requirement to submit a claim, and no funds will revert back to Defendant. The payments to individuals are significant, given that no underlying Labor Code claims are being released, and given the many risks that would have confronted Plaintiff in continuing litigation. The instant result is a good one for the 55 AEs and 54 RAEs.

V. PLAINTIFF'S REQUESTED ATTORNEYS' FEES AND COSTS AWARD

66. Plaintiff requests that the Court approve an award of attorneys' fees of \$49,500. Under the percentage-of-the-fund analysis, the requested fee award is 33% of the common fund (\$150,000). The requested award represents the benchmark award of one-third that courts routinely award, and is well justified under the lodestar-multiplier cross-check discussed below. Indeed, in one recent PAGA-only case in this county, the court approved a settlement in which \$35,000 was paid in civil penalties, \$10,000 was paid as a service award to the representative plaintiff, and \$630,000 was paid in attorneys' fees and costs. See Exhibit 2 (*Starks* Order Approving PAGA Settlement, Oct. 24, 2017).

67. Here, several factors support awarding fees at slightly below the one-third benchmark. First, Plaintiff's Counsel undertook significant risk in agreeing to litigate this case and advance costs on a contingency basis. Other risks on the merits are detailed above, and if the case had been unsuccessful, counsel would have received zero compensation for their work for Plaintiff, AEs and RAEs. Second, awards of common fund fees are important to attract competent counsel to handle complex contingency cases. *Melendres v. City of L.A.*, 45 Cal. App. 3d 267, 273 (1975) (counsel "will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if [they are] assured that [they] will be promptly and directly compensated should [their] efforts be successful."). Third, accepting this litigation on a contingency basis resulted in my firm foregoing other employment. Because my firm must maintain appropriate attorney and staff-to-case ratios, taking this case required that I turn away other fee-generating work.

68. Plaintiff's requested fee award of \$49,500 is modest in light of a lodestar multiplier cross-check. As set out in detail below, as of February 25, 2022, my firm's lodestar is \$111,849.50, making the requested fee under the lodestar method a negative multiplier of 0.44. My firm's lodestar amount is documented by detailed and contemporaneous billing records. Our lodestar does not include the work that will need to be done to finalize the motion papers, file them with the Court and LWDA, prepare for and appear at the motion hearing, address any questions by the Court, and communicate with the Settlement Administrator and opposing counsel to ensure that the distribution is conducted correctly. I estimate that this will require another 20 hours of work, which means that a fee award of \$49,500 will represent an even lower multiplier of our ultimate lodestar at the conclusion of the case.

69. My current hourly rate is \$870/hour. The current hourly rate of my associates Ms. Brandler and Mr. Barnes is \$695, and the current hourly rate of my associate Mr. Cherniak is \$605. Dr. Michelsohn's hourly rate is \$750. These are the rates at which my firm's lodestar in the foregoing paragraph is calculated. The 2022 hourly rates were recently approved in *Senese v. University of San Diego*, Case No. 37-2019-00047124-CU-OE-CTL (San Diego County Superior Court) (February 8, 2022); and our slightly lower 2021 hourly rates of \$825/hour for me, \$695 for Ms. Brandler, and \$575 for Mr. Cherniak were approved and found reasonable by the following courts. *Stupar et al. v University of La Verne*, Case No. 19STCV333363 (Los Angeles County Superior Court)(October 14, 2021) (approving HL's 2021 hourly rates as reasonable, and within the range of market rates that attorneys with similar levels of skill, experience and reputation in the Los Angeles Area charge for handling matters of similar complexity); *Veal v Point Loma Nazarene University*, Case No. 37-2019-00064165-CU-OE-CTL (San Diego Superior Court)(August 27, 2021) (approving HL's 2021 hourly rates as reasonable, and within the range of market rates that attorneys with similar levels of skill, experience and reputation for handling

1 matters of similar complexity); and *Pillow et al. v. Pepperdine University*, Case No. 19STCV33162 (Los
2 Angeles Superior Court)(July 28, 2021)(approving HL's 2021 hourly rates as reasonable, and within the
3 range of market rates that attorneys with similar levels of skill, experience and reputation for handling
4 matters of similar complexity).

5 70. Slightly lower 2020 rates were approved by this Court in *McCoy et v. Legacy Education*
6 *LLC*, Case No. 19STCV2792 (Los Angeles County Superior Court) (November 15, 2021) (approving fee
7 request based on lodestar calculated with HL's 2020 hourly rates); and in *Mooiman et al. v Saint Mary's*
8 *College of California*, Case No. C19-02092 (Contra Costa County Superior Court) (June 10, 2021)
9 (approving HL's 2020 hourly rates as reasonable, and within the range of market rates that attorneys with
10 similar levels of skill, experience and reputation for handling matters of similar complexity); *Peng v The*
11 *President and Board of Trustees of Santa Clara College*, Case No. 19CV348190 (Cal. Super. Ct. Santa
12 Clara Cnty., April 21, 2021) (awarding 2.75 multiplier to my firm's lodestar calculated based on HL's
13 2020 hourly rates); *Morse v Fresno Pacific University*, Case No. 19-CV-04350 (Cal. Super. Ct. Merced
14 Cnty., April 6, 2021) (approving HL's 2020 hourly rates as reasonable, and within the range of market
15 rates that attorneys with similar levels of skill, experience and reputation, and a reasonable charge for
16 handling matters of similar complexity); *Granberry v Azusa Pacific University*, Case No. 19STCV28949
17 (Cal. Super. Ct. Los Angeles Cnty., March 5, 2021); (approving 1.77 multiplier to my firm's lodestar
18 calculated using HL's 2020 hourly rates); *Ott v. California Baptist University*, Case No. RIC1904830
19 (Cal. Super. Ct. Riverside Cnty., January 26, 2021) (approving HL's 2020 rates as reasonable); and
20 *Pereltsvaig v. Cartus Corp.*, Case No. 19CV348335 (Cal. Super. Ct. Santa Clara Cnty., Jan. 13, 2021)
21 (approving 1.44 multiplier to my firm's lodestar calculated using HL's 2020 hourly rates).

22 71. As of February 25, 2022, HL attorneys have spent at least 158.4 hours working on this
23 case. Using our current billing rates, these hours equate to a lodestar of approximately \$111,849.50. The
24 hours, hourly rates, and lodestar value for the staff that billed to this case are as follows:

Attorney/Timekeeper	Rate	Hours	Lodestar
Julian Hammond, Principal	\$870	36.5	\$31,755.00
Polina Brandler, Associate	\$695	48.5	\$33,707.50
Ari Cherniak, Associate	\$605	56.3	\$34,06.50
Arie Michelson, Attorney	\$725	14.7	\$10,657.50
Adrian Barnes, Associate	\$695	2.4	\$1,668.00

1 ///

2 72. A summary of my firm's time records is as follows.

3 a. Initial Investigation and Pleadings – 43.3 hours. This time was spent on pre-filing
4 investigation, including interviewing Plaintiff and other aggrieved employees, and case analysis, drafting
5 of pleadings.

6 b. Discovery – 24.9 hours. Time necessary to draft informal discovery requests,
7 review discovery produced, request clarification and additional information, as well as gathering and
8 reviewing documents obtained from aggrieved employees as part of our own investigation and conducting
9 online research of publicly available information.

10 c. Case Management Tasks – 13.9 hours. Time needed to meet and confer with
11 opposing counsel and file case-management documents dealing with scheduling issues, as well as to keep
12 abreast of the Court's docket.

13 d. Preparing for and Attending Mediation – 58.8 hours. Time spent meeting and
14 conferred as to the mediator, preparing mediation brief, including conducting legal research and selecting
15 exhibits, and attending mediation.

16 e. Settlement Negotiation and Documentation – 10.8 hours. Time needed to review
17 and edit long form draft settlement agreement, negotiate changes to it, and discuss these issues with our
18 clients.

19 f. Preparing Approval Motion and Supporting Papers – 6.7 hours. Time needed to
20 prepare Notice of Motion, Memorandum of Points and Authorities, Request for Judicial Notice, Proposed
21 Order, Declaration and Exhibits in Support. This does not include work performed after February 25,
22 2022. I estimate that our firm spent an additional 6 hours after February 25, 2022 finalizing approval
23 papers that are not included in the lodestar.

24 73. The reasonableness of the requested fee award is supported by the fact that Plaintiff's
25 Counsel are requesting far less than their lodestar to date.

26 74. Plaintiff's Counsel has incurred \$9,593.19 in litigation costs through February 25, 2022
27 (this includes an estimated \$233 in costs post-dating this declaration, *e.g.*, filing fees for the approval
28 motion and delivery of courtesy copies to the Court). The costs that my firm has incurred to date consist
of the following:

a. Fees charged by OneLegal for filing and electronic service: \$82.99

b. Fees charged by Rezac Meyer for filing, service, and courtesy copies delivery: \$1,916.41

c. Filing and service fees charged by other vendors: \$225.19

1 d. LWDA PAGA submission fee: \$75

2 e. Mediator's fees paid by Plaintiff: \$7,000

3 f. Research costs charged by Los Angeles Superior Court: \$60.60

4 **VI. SERVICE AWARD**

5 75. The request for Service Award of \$5,000 to Plaintiff is reasonable and fair. The Service
6 Award is intended to compensate Plaintiff for the critical role he played in this case as the sole lead
7 plaintiff/representative of the State and the time, effort, and risk he undertook in helping secure the result
8 obtained on behalf of the aggrieved employees and the State. In agreeing to serve first as a private attorney
9 general (and initially also as a class representative), Plaintiff formally agreed to accept the responsibility
10 of representing the interests of all aggrieved employees and the State. He collected documents and
11 diligently assisted my firm in the investigation of the case and in seeking informal discovery. Plaintiff's
12 participation and assistance was critical to the success of this litigation and the enforcement of Labor Code
13 protections. Without his commitment to come forward and serve as the sole lead plaintiff, this litigation,
14 which enforces the protections of the California Labor Code, would not have been brought. Plaintiff
15 assumed the risk of being branded as "troublemakers" and blacklisted by other employers in their industry.

16 I declare under penalty of perjury under the laws of the United States and the State of California
17 that the foregoing is true and correct. Executed on March 4, 2022.

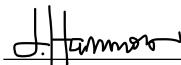
18 By: 
19 Julian Hammond

EXHIBIT 1

Approved California Wage and Hour Cases

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

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

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

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

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

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

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

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

Approved California Consumer Cases

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

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

EXHIBIT 2

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5 Malibu, California 90265
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7 Edwin Aiwazian (SBN 232943)
8 Arby Aiwazian (SBN 269827)
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14 Facsimile: 818-265-1021

15 Attorneys for Plaintiff

16 *Additional Counsel Listed Below*

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 COUNTY OF LOS ANGELES / CENTRAL DISTRICT

19 CHAD STARKS, individually, and on
20 behalf of other aggrieved employees
21 pursuant to the California Private
22 Attorneys General Act;

23 Plaintiffs,

24 v.

25 VORTEX INDUSTRIES, INC., a
26 California corporation, and DOES 1 to
27 100, inclusive,

28 Defendants.

Case No.: BC590955.

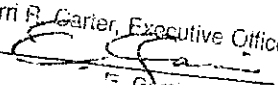
Assigned for All Purposes to:
The Hon. Richard L. Fruin
Dept. 15

Complaint Filed: August 10, 2015
Trial Date: July 3, 2017

**[PROPOSED] ORDER AND
JUDGMENT APPROVING PAGA
SETTLEMENT**

FILED
Superior Court of California
County of Los Angeles

OCT 24 2017

Sherri R. Carter, Executive Officer/Clerk
By:  Deputy

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

2 A Limited Liability Partnership

3 Including Professional Corporations

4 RYAN D. McCORTNEY, Cal. Bar No. 132194

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6 Costa Mesa, California 92626-1993

7 Telephone: 714.513.5100

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9 Email: rmccortney@sheppardmullin.com

10 Attorney for Defendant

11 VORTEX INDUSTRIES, INC.

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ORDER AND JUDGMENT APPROVING PAGA SETTLEMENT

1
2 1. GOOD CAUSE having been shown, the Court hereby approves the Parties'
3 PAGA Settlement Agreement.

4 2. Judgment in this matter is entered in accordance with, and incorporates by
5 reference, the terms and conditions of the PAGA Settlement Agreement. The Court hereby
6 directs the implementation of all remaining terms, conditions, and provisions of the PAGA
7 Settlement Agreement with the exception of the following. Instead of filing a request for
8 dismissal to terminate this action, this order and judgment will terminate the action.

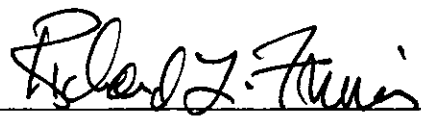
9 3. The PAGA Settlement Agreement is not an admission by Defendant, nor is
10 this order and judgment a finding of the validity of any allegations or of any wrongdoing
11 by Defendant. Neither this order and judgment, the PAGA Settlement Agreement, nor any
12 document referred to herein, nor any action taken to carry out the PAGA Settlement
13 Agreement, may be construed as, or may be used as, an admission of any fault,
14 wrongdoing, omission, concession, or liability whatsoever by or against Defendant.

15 4. The PAGA Settlement Agreement shall be binding on all Aggrieved
16 Employees and the State of California, who are hereby barred from re-litigating the Settled
17 Claims.

18 5. Pursuant to Code of Civil Procedure section 664.6 the Court shall retain
19 exclusive and continuing jurisdiction over the above-captioned action and the parties for
20 purposes of enforcing the terms of the Settlement Agreement.

21
22 **IT IS SO ORDERED.**

23
24 Date: Oct. 24, 2017



Honorable Richard L. Fruin
Los Angeles County Superior Court Judge

1 Kevin Shenkman (SBN 223315)
2 Mary R. Hughes (SBN 222662)
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15 Attorneys for Plaintiff

16 *Additional Counsel Listed Below*

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 COUNTY OF LOS ANGELES / CENTRAL DISTRICT

19 CHAD STARKS, individually, and on
20 behalf of other aggrieved employees
21 pursuant to the California Private
22 Attorneys General Act;

23 Plaintiffs,

24 v.

25 VORTEX INDUSTRIES, INC., a
26 California corporation, and DOES 1 to
27 100, inclusive,

28 Defendants.

FILED

Superior Court of California
County of Los Angeles

OCT 12 2017

Sherri R. Carter, Executive Officer/Clerk

By Karen Tapper Deputy

Case No.: BC590955

Assigned for All Purposes to:
The Hon. Richard L. Fruin
Dept. 15

Complaint Filed: August 10, 2015
Trial Date: July 3, 2017

**JOINT EX PARTE APPLICATION FOR
COURT APPROVAL OF PAGA
SETTLEMENT OR, IN THE
ALTERNATIVE, FOR AN ORDER
SHORTENING TIME FOR
CONSIDERATION OF JOINT
STIPULATION FOR COURT
APPROVAL OF PAGA SETTLEMENT**

Date: October 12, 2017
Time: 8:30 a.m.
Dept: 15

CHECK: \$0.00
CASH: \$0.00
TOTAL: \$0.00
\$60.00

RECEIPT # CCH2489007
DATE PAID: 10/12/17 08:07 AM
PAYMENT: \$60.00
RECEIVED: 310

CIT/CASE: BC590955
LEA/DEF#:

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
2 A Limited Liability Partnership
3 Including Professional Corporations
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9 Email: rmccortney@sheppardmullin.com
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11 Attorneys for Defendant
12 VORTEX INDUSTRIES, INC.
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10/24/2017

1 TO THE HONORABLE COURT, TO ALL PARTIES, AND THEIR RESPECTIVE
2 ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on October 12, 2017, in Department 15 of the Superior
4 Court of the State of California for the County of Los Angeles, located at 111 North Hill Street,
5 Los Angeles, California 90012, before the Hon. Richard Fruin, Plaintiff Chad Starks and
6 Defendant Vortex Industries, Inc. (collectively the "Parties"), will *jointly* apply, ex parte, for an
7 order approving their settlement of the above-captioned case, or, in the alternative, to shorten time
8 to consider their stipulation to approve the settlement.

9 This ex parte application is made on the grounds that the parties have entered into a fair
10 settlement of the above-captioned case that provides for significant relief to be distributed to Mr.
11 Starks, other aggrieved employees and the State of California, and the Parties, other aggrieved
12 employees and the State of California will benefit from expeditious approval of the settlement.

13 This ex parte application is based on this Ex Parte Application; the Declaration of Kevin
14 Shenkman and supporting evidence; and such further evidence and argument as may be presented
15 at the hearing on the application.

16 On October 10, 2017, prior to the 10:00 a.m. October 11, 2017 deadline, counsel for the
17 Parties agreed that they would jointly seek the ex parte relief sought in this Application on
18 October 12, 2017. The Parties' respective counsel have indicated that they do not oppose the
19 relief sought.

20 Pursuant to California Rule of Court 3.1202(a), the following attorneys are known as
21 attorneys of record for the parties in this litigation:

22 Ryan McCortney, Sheppard Mullin Richter & Hampton LLP, 650 Town Center Drive, 4th
23 Floor, Costa Mesa, CA 92626

24 Kevin Shenkman, Shenkman & Hughes PC, 28905 Wight Rd., Malibu, CA 90265
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27
28

1 Dated: October 11, 2017

Respectfully submitted:

2 **SHENKMAN & HUGHES**

3 KEVIN I. SHENKMAN

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5 By: _____

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10/24/2017

1 **I. INTRODUCTION**

2 On July 19, 2017, the first phase of the bifurcated trial of the above-entitled action
3 concluded. On September 11, 2017, the parties informed the Court that they wished to
4 mediate the case to see if it could be resolved before the second phase of the trial
5 commenced. On October 2, 2017, the parties mediated the case with retired Judge Gail
6 Andler, who most recently served in the Complex Department of the Orange County
7 Superior Court where she presided over numerous actions brought under the Private
8 Attorneys General Act (PAGA), Labor Code §§ 2698, *et. seq.* After a full-day of arms-
9 length negotiations and mediation with Judge Andler, the parties reached a settlement.
10 Labor Code Section 2699(l) states that “[t]he superior court shall review and approve any
11 penalties sought as part of a proposed settlement agreement pursuant to [the PAGA].”¹
12 The parties now seek Court approval of the settlement. Because PAGA actions are not
13 class actions, Rule of Court 3.769 is inapplicable to the settlement and aggrieved
14 employees are not entitled to notice or an opportunity to “opt out” or object to the
15 settlement as they are not *parties* to the lawsuit. For the reasons discussed below, the
16 Court should approve the settlement.

17 **II. FACTS AND PROCEDURE**

18 On June 30, 2015, Plaintiff Chad Starks (“Plaintiff”), through his counsel, sent a
19 PAGA notice letter to the Labor and Workforce Development Agency (“LWDA”) by
20 certified mail, copying Defendant Vortex Industries, Inc. (“Defendant”), in which he
21 alleged the violation of Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 510,
22 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, for (1) failure to pay overtime,
23 (2) failure to provide meal periods, (3) failure to provide rest periods, (4) failure to pay
24 minimum wages for all hours worked, (5) failure to timely pay wages upon termination,
25 (6) failure to timely pay wages during employment, (7) failure to provide complete and

26
27 ¹ For cases filed before July 1, 2016, such as this case, section 2699(l) stated that “[t]he superior
28 court shall review and approve any penalties sought as part of a proposed settlement agreement
pursuant to this part.” For cases filed on or after July 1, 2016, section 2699(l)(2) states that “[t]he
superior court shall review and approve any settlement of any civil action filed pursuant to this
part.”

1 accurate wage statements, (8) failure to keep complete and accurate payroll records, and
2 (9) failure to reimburse necessary business-related expenses and costs. On August 10,
3 2015, Plaintiff filed his Complaint in the above-entitled action in which he alleged a single
4 cause of action for penalties under PAGA for the same violations of the Labor Code as set
5 forth in his letter to the LWDA.

6 At the conclusion of the first phase of the trial on July 19, 2017, the Court issued an
7 oral ruling from the bench that Plaintiff is an "aggrieved employee" because he was not
8 paid for certain work while "on-call." On September 11, 2017, the parties informed the
9 Court that they wished to mediate the case to see if it could be resolved before the second
10 phase of the trial commenced. On October 2, 2017, the parties mediated the case with
11 retired Judge Gail Andler and reached a settlement. The settlement was memorialized in a
12 written agreement, the substantive terms of which are as follows:

13 1) Defendant will pay \$25,000 in PAGA civil penalties, 75% to the Labor and
14 Workforce Development Agency and 25% distributed equally among the aggrieved
15 employees;

16 2) Defendant will pay \$10,000 as a service award to Plaintiff;

17 3) Defendant will pay \$10,000 in wages / penalties pursuant to Labor Code
18 section 558, all of which shall be distributed equally among the aggrieved employees;

19 4) Defendant will pay \$630,000 in attorneys' fees and costs to Plaintiff's
20 counsel;

21 5) Plaintiff shall file a First Amended Complaint explicitly requesting penalties
22 provided for under Section 558 of the Labor Code to clarify that the penalties of Section
23 558 are part of the above-captioned case; and

24 6) Plaintiff, on behalf of himself and the LWDA, releases Defendant.

25 Perhaps most importantly, Defendant has ceased the practice that this Court found
26 to violate the California Labor Code.

27 Labor Code Section 2699(1)(2) provides "[t]he proposed settlement shall be
28 submitted to the agency at the same time that it is submitted to the court." On October 5,