

HAMMONDLAW, P.C.
Julian Hammond (SBN 268489)
jhammond@hammondlawpc.com
Polina Brandler (SBN 269086)
pbrandler@hammondlawpc.com
Ari Cherniak (SBN 290071)
acherniak@hammondlawpc.com
1201 Pacific Avenue, Suite 600
Tacoma, WA 98402
(310) 601-6766
(310) 295-2385 (Fax)

Attorneys for Plaintiffs and the Putative Classes

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

CHARLES CASTILLO and **DEIDRE BEAN**,
individually and on behalf of all others similarly
situated,

Plaintiffs,

vs.

HOLY NAMES UNIVERSITY, a California
Non-Profit Corporation,

Defendant.

CASE NO. HG21097245

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

Date: October 4, 2022
Time: 3:00 p.m.
Dept. 23; Hon. Brad Seligman
Reservation ID: 908281441192

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	OVERVIEW OF THE SETTLEMENT TERMS.....	1
III.	OVERVIEW OF THE LITIGATION.....	3
	A. Pleadings	3
	B. Pre-Mediation Investigation and Discovery	5
	C. HNU Revised Its Compensation System to Hourly and HNU Implemented an Expense Reimbursement Policy in 2021; in Spring 2022 HNU Adopted a New CBA and Reverted to Pay Per-Course	6
	D. Mediation.....	6
IV.	DEFENDANT’S MAJOR DEFENSE	6
V.	CERTIFICATION FOR SETTLEMENT PURPOSES IS APPROPRIATE.....	8
	A. The Classes Are Ascertainable and Sufficiently Numerous	8
	B. “Community of Interest” Exists Among CMs	9
	C. This Class Action Is a Superior Method of Adjudication	10
VI.	THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT.....	11
	A. The Two Step Settlement Approval Process	11
	B. The Settlement is Fair and Reasonable	11
	C. The Proposed Class Notice Content and Procedure Are Adequate.....	21
	D. The Service Award to Each Class Representatives Is Reasonable	21
	E. The Requested Attorneys’ Fees and Costs Are Reasonable.....	21
VII.	CONCLUSION	22

TABLE OF AUTHORITIES

CASES

<i>Amaro v. Gerawan Farming, Inc.</i> , No. 1:14-cv-00147-DAD-SAB, 2016 U.S. Dist. LEXIS 112540 (E.D. Cal. Aug. 23, 2016).....	15
<i>Bernstein v. Virgin Am., Inc.</i> , Nos. 19-15382, 20-15186, 2021 U.S. App. LEXIS 6641 (9th Cir. Mar. 8, 2021)	18
<i>Brinker Restaurant Corp. v. Super. Ct.</i> , 53 Cal. 4th 1004 (2012).....	8
<i>Bufile v. Dollar Fin. Grp., Inc.</i> , 162 Cal. App. 4th 1193 (2008).....	11
<i>Caro v. Procter, & Gamble Co.</i> , 18 Cal. App. 4th 644 (1993).....	10
<i>Cartt v. Superior Court</i> , 50 Cal. App. 3d 960 (1975).....	21
<i>Castillo v. ADT, LLC</i> , No. 2:15-383 WBS DB, 2017 U.S. Dist. LEXIS 10579 (E.D. Cal. Jan. 24, 2017)	18
<i>Cellphone Termination Fee Cases</i> , 186 Cal. App. 4th 1380 (2010).....	21
<i>Chavez v. Netflix, Inc.</i> , 162 Cal. App. 4th 43 (2008).....	12
<i>Cotter v. Lyft, Inc.</i> , 193 F. Supp. 3d 1030 (2016).....	18
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794 (1996).....	11, 12
<i>Elliot v. Spherion Pac. Work, LLC</i> , 572 F.Supp. 2d 1169 (C.D. Cal. 2008).....	16
<i>Fireside Bank v. Super. Ct.</i> , 40 Cal. 4th 1069 (2007).....	9
<i>Furry v. East Bay Publishing, LLC</i> , 30 Cal. App. 5th 1072 (2018).....	14
<i>Gola v. University of San Francisco</i> , No. CGC-18-565018 (San Francisco Cnty. Super. Ct. March 3, 2021).....	19
<i>Hicks v. Kaufman & Broad Home Corp.</i> , 89 Cal. App. 4th 908 (2001).....	9

1	<i>Kao v. Holiday</i> , 12 Cal. App. 5th 947 (2017).....	14
2	<i>Kettenring v. Los Angeles Unified School Dist.</i> , 167 Cal. App. 4th 507 (2008).....	8
3		
4	<i>Kim v. Reins International California, Inc.</i> , 9 Cal. 5th 73 (2020).....	18
5	<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116 (2008).....	11, 12
6		
7	<i>Linder v. Thrifty Oil Co.</i> , 23 Cal. 4th 429 (2000).....	8
8	<i>Lubin v. Wackenhut Corp.</i> , 5 Cal. App. 5th 926 (2016).....	13, 17
9		
10	<i>Martin v. AmeriPride Servs.</i> , No. 08-cv440-MMA (JMA), 2011 U.S. Dist. LEXIS 61796 (S.D. Cal. June 9, 2011)	21
11	<i>Mooiman et al. v. Saint Mary's College of California</i> , No. C19-02092 (Contra Costa Cnty. Super. Ct. June 10, 2021)	19
12		
13	<i>Mullane v. Central Hanover Bank & Trust</i> , 339 U.S. 306 (1950)	21
14	<i>Negri v. Koning Assocs.</i> , 216 Cal. App. 4th 392 (2013).....	8
15		
16	<i>Noel v. Thrifty Payless, Inc.</i> , 7 Cal. 5th 955 (2019).....	9
17	<i>Nordstrom Com'n Cases</i> , 186 Cal. App. 4th 576 (2010).....	16
18		
19	<i>O'Connor v. Uber Techs., Inc.</i> , 201 F. Supp. 3d 1110 (N.D. Cal. Aug. 18, 2016).....	19
20	<i>Raphael v. Tesoro Ref & Mktg. Co.</i> , No. 2:15-cv-02862-ODW, 2015 U.S. Dist. LEXIS 130532 (C.D. Cal. Sept. 25, 2015).....	19
21		
22	<i>Reyes v. Board of Supervisors</i> , 196 Cal. App. 3d 1263 (1987).....	9
23	<i>Richmond v. Dart Industries, Inc.</i> , 29 Cal. 3d 462 (1981).....	9
24		
25	<i>Robinson v. Open Top Sightseeing San Francisco, LLC</i> , No. 14-cv-00852, 2018 U.S. Dist. LEXIS 24556 (N.D Cal. Feb. 14, 2018).....	13
26	<i>Rose v. City of Hayward</i> , 126 Cal. App. 3d 926 (1981).....	9
27		
28		

1	<i>Sav-On Drugs Stores, Inc. v. Super. Ct.</i> , 34 Cal. 4th 319 (2004).....	9
2	<i>Seastrom v. Neways, Inc.</i> , 149 Cal. App. 4th 1496 (2007).....	10
3		
4	<i>Steven Price v. Uber Technologies</i> , No. BC554512 (Los Angeles Cnty. Super. Ct.)	18
5	<i>Stolt-Nielsen, S.A. v. AnimalFeeds Int’l Corp.</i> , 130 S. Ct. 1758 (2010)	6
6		

7 **STATUTES**

8	California Business & Professions Code §§ 17200 et seq. (“UCL”)	4
9	California Labor Code § 1194.....	4
10	§ 1194.2	4
11	§ 201	4, 10
12	§ 203	4, 15, 16
13	§ 226(a).....	4, 10
14	§ 226(a)(2).....	13
15	§ 226(a)(3).....	13
16	§ 226(a)(9).....	13
17	§ 226.2	4
18	§ 226.2(a).....	4, 13
19	§ 226.2(a)(1).....	15
20	§ 226.7	4, 15
21	§ 2698 et seq.....	4
22	§ 2699	19
23	§ 2802	4
24	§ 515(a).....	4
25	§ 515.7	5, 7, 8, 13, 18
26	§ 515.7(a)(2)(B).....	8
27	§ 515.7(a)(2)(C).....	8
28		

1 29 U.S.C. § 301 4, 7

2 **RULES**

3 Cal. Rules of Court, Rule 3.766 21

4 Cal. Rules of Court, Rule 3.769 8, 11

5 **TREATISIES**

6 1 Newberg on Class Actions § 3.12 (5th ed. 2011)..... 9

7 1-3 California Class Actions Practice and Procedure (2007) § 3.02..... 10

8 4 Newberg on Class Actions § 11.25 (4th ed. 2002)..... 11

9 Manual for Complex Litigation (Fourth) § 21.6 11

10 **OTHER AUTHORITIES**

11 IWC Wage Order No. 4-2001, § 1 7

12 IWC Wage Order No. 4-2001, § 4 4

13 IWC Wage Order No. 4-2001, § 12 3, 4

I. INTRODUCTION

Plaintiffs Charles Castillo and Deidre Bean (“Plaintiffs”) seek preliminary approval of a non-reversionary \$875,000 settlement of their class and PAGA wage and hour claims against Holy Names University (“Defendant” or “HNU”) on behalf of three classes: (a) 377 part-time faculty members employed by HNU in California (“Part-time Faculty Class Members” or “Part-time Faculty CMs”) from April 16, 2017 through the date of preliminary approval (“Class Period”); (b) 182 HNU non-faculty employees who worked remotely (“Expense Reimbursement Class Members” or “ER CMs”) from March 16, 2020 through the date of preliminary approval (“Expense Reimbursement Class Period”); and (c) 408 non-faculty HNU employees who received wage statement(s) that did not include pay period beginning dates (“General Class Members” or “General CMs”) from April 16, 2020 through the date of preliminary approval (“General Class Period”).

This settlement was reached after a thorough and extensive investigation by Plaintiffs’ Counsel, the exchange of documents and information for purposes of mediation, and a full-day mediation with a skilled mediator. The settlement, if approved, will represent guaranteed and substantial recovery while avoiding risks and expense of continued litigation. Part-time Faculty CMs will receive an average gross recovery of \$1,892 and \$1,057 net. Declaration of Julian Hammond in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Hammond Decl.”), filed herewith, ¶ 58. ER CMs will receive an average gross recovery of \$745 and \$416 net. *Id.* ¶ 62. General CMs will receive an average gross recovery of \$64 and \$36 net. *Id.* ¶ 66.

The Settlement Agreement avoids all the risks associated with the typical litigation, as well as the significant risks posed by Defendant’s federal preemption and arbitration arguments. The terms of the Settlement Agreement are fair and reasonable, and satisfy the criteria for judicial approval. Accordingly, Plaintiffs respectfully request that the Court grant preliminary approval, approve the proposed Notice of Class Action Settlement, and set a date for a final approval hearing.¹

II. OVERVIEW OF THE SETTLEMENT TERMS

The Settlement Agreement resolves all claims of the Plaintiffs and the proposed Classes alleged in the First Amended Complaint. A summary of the Settlement terms follows:

1. Gross Settlement Amount (“GSA”) – HNU will pay a non-reversionary sum of \$875,000 to settle this case. SA at § 1.14. HNU will also pay the employer’s share of payroll taxes separately from the GSA. *Id.* §§ 1.14, 15.1.

¹ The Class Action Settlement Agreement (“SA”) is attached as **Exhibit 1** to the Hammond Decl.

1 2. Class Definitions and Class Periods – The “Part-time Faculty Class” consists of all current
2 or former part-time faculty employed by HNU in California during the Class Period, which is defined as
3 April 16, 2017 through the date the Court grants preliminary approval. SA §§ 1.4, 1.21. The “Expense
4 Reimbursement Class” consists of all current or former HNU employees in California, except for Part-
5 time Faculty CMs, who were required to work from home during the COVID-19 pandemic and allegedly
6 did not receive proper expense reimbursement during the Expense Reimbursement Class Period, defined
7 as March 16, 2020 through the date of preliminary approval. *Id.* “General Class Members” consist of all
8 current and former individuals, other than Part-time Faculty CMs, employed by Defendant in California
9 during the General Class Period, defined as April 16, 2020 to the date of preliminary approval, who
10 received wage statement(s) that did not include the beginning date of each pay period. *Id.*

11 3. Attorneys’ Fees, Costs, and Named Plaintiffs’ Service Awards – Class Counsel will seek
12 attorneys’ fees of up to \$306,250 (35% of the GSA) and up \$20,000 in out-of-pocket litigation costs. SA
13 § 6. The Settlement Agreement also provides for payment of \$5,000 to each Plaintiff (for a total of up
14 to \$10,000) as their service awards, subject to Court approval. SA § 7.

15 4. Administration Costs – The Parties have mutually agreed to use CPT, Inc., as the
16 Settlement Administrator. CPT is an experienced class action administrator and has provided notification
17 and/or claims administration services in thousands of cases. Hammond Decl. ¶ 88. The Settlement
18 Administrator’s expenses shall be reimbursed up to a cap of \$20,000. SA §§ 1.26, 9.

19 5. PAGA Payment – The Settlement allocates \$30,000 to PAGA penalties, with \$22,500 to
20 be paid to the California Labor and Workforce Development Agency (“LWDA”) as its 75% share of
21 PAGA penalties, and the remaining \$7,500 to be distributed to the members of the Classes who worked
22 during the PAGA Period. SA §§ 1.16, 8.

23 6. Net Settlement Amount (“NSA”) – The Net Settlement Amount will total approximately
24 \$488,750. Hammond Decl. ¶ 74, fn. 9. This is the amount remaining after subtracting from the GSA
25 attorneys’ fees, costs, service awards, settlement administration costs, and PAGA penalties. The NSA
26 will be paid as follows: \$398,331 (approximately 81.5% of the NSA) will be allocated to the Part-time
27 Faculty CMs on a pro-rata basis based on the number of pay periods worked during the Class Period;
28 \$75,756 (approximately 15.5% of the NSA) will be allocated to the ER CMs based on the number of pay
periods worked during the ER Class Period; and \$14,662.50 (approximately 3% of the NSA) will be
allocated to the General CMs based on the number of pay periods worked during the General Class
Period. SA § 5.1. All Class Members who worked at least one pay period during the PAGA Period will

1 be paid their per capita share of the amount of PAGA Penalties allocated to each group of aggrieved
2 employees. SA § 8.

3 7. Class Notice – Within ten business days of preliminary approval, HNU will provide the
4 Settlement Administrator with the Class List and the number of pay periods worked by each member of
5 each class during the relevant periods. SA § 10.1. Within 25 calendar days of preliminary approval,
6 after updating addresses, CPT will mail to each CM a Notice substantially in the form attached to the SA
7 as **Exhibit A**. SA § 10.3. For all returned Notices, CPT will use skip tracing to update addresses and
8 initiate a second mailing. SA § 10.4.

9 8. Automatic Participation – The Settlement is non-claims-made, and each CM will
10 automatically receive their share of the NSA unless s/he opts out. SA § 11.1.

11 9. Opting Out or Objecting – CMs who wish to opt-out of the Settlement must send a written
12 notice to CPT requesting to opt-out of the Class within 45 days of the date the Notices are mailed out.
13 SA § 11.1. Any CM who properly requests to opt-out will not be entitled to receive any payment under
14 the settlement (except for their share of PAGA Penalties) and will not be bound by the settlement (except
15 for the release of PAGA claims). SA § 11.2. A CM may object to the Settlement by sending CPT, within
16 45 calendar days of the Notice mailing date, a written statement objecting to the Settlement. SA § 12. If
17 a CM objects to the Settlement, s/he will remain a member of the Class, and if the Court approves the
18 Settlement, s/he will be bound by the terms of the Settlement in the same way and to the same extent as
19 a CM who does not object. SA § 11.3.

20 10. Tax Consequences of Settlement Payments – For tax purposes, the payment monies paid
21 to the Part-time Faculty Class will be allotted 25% to wages and 75% to penalties and interest. Payments
22 to the ER Class will be allocated 100% as non-wage payments and payments to the General Class will
23 be allotted 100% to penalties. SA § 5.2.

24 11. Scope of Release and Final Judgment – Class Members will release all claims that are
25 alleged against HNU in the First Amended Complaint (“FAC”) or that could have been alleged based on
26 the facts asserted in the FAC on their behalf. SA § 16.2. Named Plaintiffs will also give additional
27 general releases against Defendant as consideration for their service award. SA § 16.5.

28 **III. OVERVIEW OF THE LITIGATION**

A. Pleadings

On April 16, 2021, Plaintiff Castillo filed this lawsuit in Alameda County Superior Court alleging
causes of action for Defendant’s alleged (a) failure to issue accurate itemized wage statements in violation

1 of Labor Code §§ 226(a), 226.2(a); (b) failure to reimburse business expenses in violation of Labor Code
2 § 2802; and (c) unfair, unlawful, or fraudulent business practices in violation of Business & Professions
3 Code §§ 17200 et seq. (“UCL”). On August 6, 2021, Plaintiff Castillo filed a First Amended Complaint
4 (“FAC”) adding Plaintiff Deidre Bean, and alleging additional causes of action against Defendant for (d)
5 failure to pay separately and hourly for nonproductive time and/or failure to pay wages for all hours
6 worked in violation of Labor Code §§ 226.2, 1194, 1194.2 and IWC Wage Order No. 4-2001 (“Wage
7 Order No. 4”), § 4; (e) failure to pay separately and hourly for rest breaks and/or failure to authorize and
8 permit paid rest breaks, and failure to pay missed rest break premium pay in violation of Labor Code §§
9 226.2, 226.7, 1194 and Wage Order No. 4, §§ 4, 12; (f) failure to pay compensation due upon discharge
10 or separation from employment in violation of Cal. Labor Code §§ 201-203; and (g) a claim for Private
11 Attorneys General Act, Labor Code § 2698 et seq. (“PAGA”) penalties. Specifically, Plaintiffs alleged
12 that Part-time Faculty CMs were non-exempt because they were paid on a “piece-rate” basis i.e., a flat
13 amount per course taught, and also did not earn the minimum required to be exempt under Labor Code §
14 515(a) of two times the state minimum wage for full time employment. Plaintiffs alleged that, as a result,
15 HNU was required to pay them separately from the course pay and hourly for non-productive time,
16 including the time spent working prior to the start of classes and the start of their contracts pursuant to
17 Labor Code §§ 1194, 226.2 and Wage Order No. 4, § 4, and that HNU was required but failed to pay
18 separately and hourly for rest breaks and/or failed to authorize and permit paid rest breaks or pay missed
19 rest break premiums pursuant to Labor Code §§ 226.2, 226.7 and Wage Order No. 4, §§ 4, 12. As a
20 result of unpaid wage/premium pay violations, Plaintiffs asserted HNU owed them waiting time penalties
21 under Labor Code § 203 for failure to pay all wages due at the time of discharge, which occurs at the end
22 of each contract. Additionally, Plaintiffs asserted that HNU owed them waiting time penalties because
23 they were not paid on the date of discharge but only on the next regularly scheduled payroll date. Finally,
24 Plaintiffs alleged that HNU required and/or expected them to work remotely from home during the
25 COVID-19 pandemic, and that they incurred home office business expected as a result, yet HNU did not
26 reimburse them, in violation of California Labor Code § 2802. Hammond Decl. ¶¶ 8-10.

27 In its Answer to the FAC, HNU generally denied all allegations, and raised affirmative defenses,
28 including that the claims were preempted by § 301 of the Labor Management Relations Act and subject
to arbitration; that Part-time Faculty CMs were exempt under Labor Code § 515.7; that they were paid
all wages due; that Defendant acted in good faith and any violation was not knowing and willful; that
class members did not suffer injury; that Part-time Faculty CMs were properly classified as exempt; and

1 that any expenses incurred were not necessary and/or exceeded reasonable and/or necessary amounts,
2 and that Plaintiffs will not be able to certify their classes. Hammond Decl. ¶ 11.

3 **B. Pre-Mediation Investigation and Discovery**

4 Shortly after Plaintiffs filed the FAC, the parties agreed to attend a mediation and engage in
5 informal discovery. Defendant produced key data and documents in aid of mediation including: (a) class
6 sizes and number of aggrieved employees; (b) Plaintiffs' personnel files; (c) course data for Fall 2016
7 through Fall 2021; (d) the Employee Handbook, Faculty Handbook, and Faculty Guidebook; (e)
8 academic calendars; (f) HNU's expense reimbursement policy; and (g) an exemplar 2022 adjunct
9 employment contract. Hammond Decl. ¶ 12.

10 Plaintiffs' counsel conducted their own investigation and gathered additional documents and
11 information, including the CBA applicable to part-time adjunct instructions (effective January 2018 to
12 June 30, 2020), pre-Fall 2021 Part-Time Faculty Contracts, sample of wage statements, and other
13 documents including academic calendars, course schedules, and communications regarding HNU's
14 directive to its employees to work from home during the COVID-19 pandemic. *Id.* ¶ 13.

15 From informal discovery, Plaintiffs ascertained that HNU employs CMs on a term-by-term basis
16 pursuant to uniform employment contracts ("Part-Time Faculty Contracts" or "Contracts"). Up until Fall
17 2021, the Contracts had a defined "Contract Period," which typically corresponded to the first day of
18 classes and the last day of the exam period, listed the number of course units assigned, and
19 "Compensation for contract," which was based on the number of units assigned to teach. Pay could be
20 "pro-rated" based on low enrollment, and the Contracts "do not confer preference or entitled to renewal
21 of part-time appointment..." Hammond Decl. ¶ 14.

22 Furthermore, the Contracts contained an unlawful provision requiring CMs to expressly agree to
23 work prior to and/or beyond the Contract Period without pay. *Id.* ¶ 14. From documents produced,
24 Plaintiffs also ascertained that while the Contracts began on a specific date (*i.e.*, the first day of classes),
25 HNU required Part-time Faculty to perform work prior to the start of classes, including to prepare syllabi
26 and other course materials, plan lectures, assignments, and assessments, and generally prepare to teach
27 their class(es) before the start of classes. Prior to Fall 2021, HNU did not require Part-time Faculty to
28 track their hours worked (*id.* ¶ 15) and from the exemplar wage statements, Plaintiffs confirmed that
HNU did not include any entries for hours actually worked by Part-time Faculty prior to Fall 2021. *Id.*

From informal discovery, Plaintiffs' Counsel also learned and calculated data points necessary to
properly evaluate Part-time Faculty Class claims, including the class size, the total number of courses

1 taught during the Class Period, number of wage statements issued, the effective average hourly rate paid
2 and the average daily rate, number of classes taught that were over 3.5 hours, and the total number of
3 days that Part-time Faculty CMs were allegedly paid late (*i.e.*, the total number of days between the end
4 of their Contracts and last paycheck) during the waiting times penalties statutory period. Hammond Decl.
5 ¶¶ 17-21. Plaintiffs' Counsel also learned and calculated necessary data points to evaluate ER Class
6 claims, including the class size, and HNU's policy regarding reimbursement. *Id.* ¶¶ 18, 22-26.

7 **C. HNU Revised Its Compensation System to Hourly and HNU Implemented an**
8 **Expense Reimbursement Policy in 2021; in Spring 2022 HNU Adopted a New**
9 **CBA and Reverted to Pay Per-Course**

10 In Fall 2021, HNU revised its compensation practices with respect to Part-time Faculty CMs.
11 HNU reclassified CMs as hourly non-exempt employees and changed their compensation from per
12 course/per unit to hourly. HNU also began tracking part-time faculty instructors' hours and including
13 entries for total hours worked and hourly rates on their wage statements. Hammond Decl. ¶ 24. HNU
14 also rolled out new rest break policy applicable to Part-time Faculty CMs. *Id.* In Spring 2022, HNU
15 adopted a new CBA which states that HNU's Part-Time Faculty are professional employees exempt
16 under § 515.7, and reverted to paying Part-time Faculty CMs on a "per course" basis. *Id.*

17 In October 2021, HNU implemented an expense reimbursement policy pursuant to which it began
18 reimbursing Expense Reimbursement CMs \$10/month for internet and \$10/month for cellphone. *Id.* ¶
19 25. Finally, HNU corrected the wage statements after May 10, 2020 and ensured that they included
20 beginning, as well as end, dates of each pay period. *Id.* ¶ 26.

21 **D. Mediation**

22 On January 27, 2022, the Parties participated in a mediation session with Mr. Louis Marlin, an
23 experienced mediator who has mediated numerous wage-hour class and PAGA actions. Prior to the
24 mediation, the parties submitted detailed mediation briefs supported by documents obtained in informal
25 discovery. The parties reached an agreement in principle only after the mediator made a mediator's
26 proposal, which was subsequently memorialized in a formal settlement agreement that is presented to the
27 Court for approval. Hammond Decl. ¶ 27.

28 **IV. DEFENDANT'S MAJOR DEFENSES**

A. CBA Arbitration/Federal Preemption Defense

Defendant contended that Plaintiffs' class claims are subject to arbitration under the CBA's
arbitration provision and that based on *Stolt-Nielsen, S.A. v. AnimalFeeds Int'l Corp.*, 130 S. Ct. 1758
(2010), Plaintiffs would have to arbitrate on an individual basis. Defendant reserved the right to compel

1 arbitration if the mediation failed. Plaintiffs argued, however, that they do not allege that HNU has
2 violated the CBA, and their claims do not constitute a “grievance” as defined in the CBA. The CBA
3 defines “[a]n adjunct faculty grievance” as “a claim by the adjunct faculty that HNU has violated term(s)
4 of the Agreement with respect to employment.” Plaintiffs contended that their claims, therefore, were
5 not covered by the CBA’s arbitration provision. Hammond Decl. ¶¶ 30-31. Nevertheless, if the case did
6 not settle, Plaintiffs would be faced with a motion to compel arbitration which presented some risk to the
7 Plaintiffs. *See Id.* ¶ 32.

8 Defendant also contended that the Part-time Faculty Class claims were preempted by § 301 of the
9 Labor Management Relations Act (“LMRA”) because their resolution would necessarily dependent on
10 the interpretation of the CBA. Hammond Decl. ¶ 31. Plaintiffs, however, contended that resolution of
11 their state-law claims did not require interpretation of the CBA because the CBA makes no mention of
12 wage statement requirements, expense reimbursement, or payment upon discharge, or any other claim
13 alleged in the Complaint, and therefore there is no provision of the CBA that could be interpreted to
14 resolve these claims. *Id.* If the parties litigated this point, however, the trial court would ultimately rule
15 on whether Plaintiffs’ claims were preempted, and the losing party would appeal to the appellate court,
16 then to the Supreme Court. This process would take years. In fact, a similar LMRA preemption issue is
17 currently on appeal in another class action filed on behalf of adjunct instructors in 2018, in which
18 Plaintiffs’ counsel is class counsel. *Id.* ¶ 32.

19 **B. Exemption Defense**

20 Defendant contended that Part-time Faculty CMs are exempt under Labor Code § 515.7, effective
21 September 9, 2020, which treats as professionally exempt part-time adjuncts employees if they meet a
22 “duties test” and “salary test.” The “duties test” requires that part-time adjuncts are primarily engaged in
23 a profession requiring discretion and independent judgment. Wage Order 4, § 1(c). The “salary test”
24 requires that either the employee is either paid “a salary” that is (1) “[a] monthly salary equivalent to no
25 less than two times the state minimum wage for employment in which the employee is employed for at
26 least 40 hours per week” or (2) based on the number of “classroom hours,” taught and on a minimum rate
27 of \$117 per classroom hour in 2020, increasing to \$126 in 2021, to \$135 in 2022, and so on; or (2) if
28 employed under a CBA, that “the classification of employment in a professional capacity is expressly
included [in the CBA] in clear and unambiguous terms” (hereinafter the “CBA test”). § 515.7(a)(2)(B),
(C)). Hammond Decl. ¶ 33. The new CBA, effective July 1, 2020 to June 30, 2024, which covers “all
Adjunct Faculty” provides that “all bargaining unit faculty employed and compensated pursuant to the

1 terms of this Agreement or its predecessor were and are classified as professional exempt employees and
2 were and are exempt under California Labor Code § 515.7.” *Id.*

3 Plaintiffs argued that Part-time Faculty were never paid a salary, including under the CBA, and
4 Part-time Faculty CMs were therefore non-exempt. Except for fall 2021 quarter, when Defendant paid
5 Part-time Faculty CMs on an hourly basis, HNU had paid its adjunct instructors a flat, ascertainable
6 amount per course taught, which is a form of a piece rate because the more courses and credits an adjunct
7 taught, the more s/he was paid. Plaintiffs argued that Part-time Faculty’s piece rate compensation did
8 not qualify as a salary because the term connotes a “predetermined amount that is not subject to reduction
9 based upon the quantity or quality of work.” *Negri v. Koning Assocs.*, 216 Cal. App. 4th 392, 399 (2013)
10 (citing *Kettenring v. Los Angeles Unified School Dist.*, 167 Cal. App. 4th 507, 513-14 (2008)); *see also*
11 29 C.F.R. § 541.602 (same). HNU, however, retained the right to cancel classes if enrollment did not
12 meet predetermined targets and adjunct instructors’ compensation could be reduced by HNU pursuant to
13 this policy. This policy means that adjunct instructors’ pay was subject to reduction based on quantity of
14 work performed and, therefore, cannot be considered a salary. Hammond Decl. ¶ 34. The issue of
15 whether a compensation scheme like HNU’s (i.e., per course pay where a university reserves the right to
16 reduce compensation based on low enrollment) constitutes a piece-rate or a salary has never been decided
17 by any California courts. While Plaintiffs believe that they have the better position, they recognized
18 significant risk based on the facts and defenses in this case. *Id.* ¶ 35.

19 **V. CERTIFICATION FOR SETTLEMENT PURPOSES IS APPROPRIATE**

20 When a negotiated class action settlement has been reached prior to certification, as here, the
21 Court may make an order approving or denying certification of a provisional settlement class. Cal. Rules
22 of Court, Rule 3.769(d). The decision to certify a class is purely a procedural one and should be based
23 on the allegations in the Complaint and not on the perceived factual or legal merit of the class claims.
24 *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-40 (2000).

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

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

30 Whether a class is ascertainable is determined by examining the class definition, the size of the
31 class, and the means available for identifying class members. *See Reyes v. Board of Supervisors*, 196

1 Cal. App. 3d 1263, 1271 (1987). Class members are “ascertainable” when they may be readily identified
2 without unreasonable expense or time by reference to official records. *See Noel v. Thrifty Payless, Inc.*,
3 7 Cal. 5th 955, 980 (2019) (“We conclude that the objectives of this requirement are best achieved by
4 regarding a class as ascertainable when it is defined ‘in terms of objective characteristics and common
5 transactional facts’ that make ‘the ultimate identification of class members possible when that
6 identification becomes necessary.’” (quoting *Hicks v. Kaufman & Broad Home Corp.*, 89 Cal. App. 4th
7 908, 915 (2001))). These criteria are met here as Defendant’s records are sufficient to permit identification
8 of the members of the Classes. SA § 10.1.1.

9 The Part-time Faculty, Expense Reimbursement, and General Classes are each sufficiently
10 numerous because they consist of 377, 182, and 408 members respectively. Hammond Decl. ¶ 18; *see*
11 *also Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981); 1 Newberg on Class Actions § 3.12
12 (5th ed. 2011) (“[A] class of 40 or more members raises a presumption of impracticability of joinder.”).

13 **B. “Community of Interest” Exists Among CMs**

14 The “community of interest” requirement embodies three factors: (1) “predominant common
15 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
16 class representatives who can adequately represent the class.” *Fireside Bank v. Super. Ct.*, 40 Cal. 4th
17 1069, 1089 (2007) (quoting *Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 470 (1981)). Plaintiffs
18 satisfy each of these elements.

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

20 Where the defendant employer’s policies or conduct is uniformly directed at a class or classes of
21 employees, as it is here, the class-wide impact of the defendant’s policies satisfies the commonality
22 requirement. *See Sav-On Drugs Stores, Inc. v. Super. Ct.*, 34 Cal. 4th 319, 331 (2004) (upholding class
23 certification, where the common issue was whether the employer properly classified grocery store
24 managers as exempt from California’s overtime requirements).

25 With respect to the Part-time Faculty Class, Plaintiffs challenge common classification and pay
26 policies that raise predominant common questions of law and fact, including: (1) whether Defendant
27 misclassified Part-time Faculty as professionally exempt; (2) whether HNU’s per course/unit pay
28 constituted a piece rate; and (3) whether the compensation set out in the pre-Fall 2021 Contracts covered
work that Part-time Faculty performed prior to the beginning of their contract period. *See* Hammond
Decl., ¶¶ 10, 43. Another common question is whether Part-time Faculty were “discharged” for purposes
of Labor Code § 201 on the end date specified in their contracts. *See Id.* ¶ 50. These are questions common

1 to the entire Part-time Faculty Class because they turn on the legal question of what constitutes piece-
2 rate and/or salary, the legal interpretation of the professional exemption, and the legal meaning of the
3 term “discharge,” as well the interpretation of uniform contracts.

4 With respect to the ER Class, Plaintiffs challenged Defendant’s common expense reimbursement
5 policy which raises a common question of law and fact: whether the burden was on CMs to request
6 reimbursement, and whether the reimbursement amount HNU offered after October 2021 was sufficient
7 to cover necessarily incurred expenses by ER CMs. *See Id.* ¶¶ 10, 25. These questions are common to the
8 entire ER Class because all CMs required to work remotely after March 16, 2020. *Id.* ¶ 10. Finally, with
9 respect to the General Class, Plaintiffs contend that from April 16 to May 10, 2020, HNU failed to include
10 on the wage statements the beginning date of each pay period, in violation of § 226(a)(6). *Id.* ¶¶ 10, 63.

11 **2. Plaintiffs’ Claims Are Typical of the Class Claims**

12 Plaintiffs’ claims are typical of the Classes that they seek to represent because they were
13 subject to the same compensation, classification, and expense reimbursement policies and practices,
14 suffered the same types of injury, and seek the same types of relief, as the putative Classes. *See Seastrom*
15 *v. Neways, Inc.*, 149 Cal. App. 4th 1496, 1502 (2007); *see also* 1-3 California Class Actions Practice and
16 Procedure (2007) § 3.02.

17 **3. Plaintiffs and Their Attorneys Will Adequately Represent the Class.**

18 “Adequacy of representation depends on whether the plaintiff’s attorney is qualified to conduct
19 the proposed litigation and the plaintiff’s interests are not antagonistic to the interests of the class.” *Caro*
20 *v. Procter & Gamble Co.*, 18 Cal. App. 4th 644, 669, n.21 (1993) (citations and quotation marks omitted).
21 Both elements are satisfied here. Plaintiffs’ Counsel are highly skilled and experienced in similar cases
22 and have extensive class action litigation experience. Hammond Law has been appointed class counsel
23 in numerous class actions and has represented thousands of adjunct instructors in similar unpaid wage
24 cases since 2016 including 22 cases that have receive final approval. Hammond Decl. ¶ 6. Plaintiffs are
25 committed to representing the interests of the Classes, do not have any conflicts with any CM, and their
26 interests are virtually coextensive with those of the CMs. *Id.* ¶ 4.

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

28 Plaintiffs’ and the Part-time Faculty CMs’ claims are based on Plaintiffs’ contentions that
Defendant had uniform policies and/or practices of paying Part-time Faculty by the piece, of failing to
compensate them for the time spent working prior to the beginning of their contracts and for rest and
meal break time, of paying their final wages after their discharge date, of issuing inaccurate wage

1 statements, and failing to reimburse business expenses. All of these claims involve common evidence,
2 including uniform employment contracts HNU issued to CMs, academic calendars, handbooks,
3 compensation policies, payroll calendars, wage statements, and remote work and reimbursement policies.
4 Plaintiffs' and the Expense Reimbursement CMs' claims are based on Plaintiffs' contentions that
5 Defendant had uniform policies and/or practices of failing to timely reimburse Expense Reimbursement
6 CMs for business expenses necessarily incurred as a result of working remotely during the COVID
7 pandemic. Plaintiffs' and General CMs' claims are based on Plaintiffs' contention that Defendant failed
8 to include the pay period start date on wage statements. Accordingly, it would be inefficient to resolve
9 the claims of each Class at separate trials. *See Bufile v. Dollar Fin. Grp., Inc.*, 162 Cal. App. 4th 1193,
10 1208 (2008). The class action mechanism will also allow Plaintiffs and the classes to obtain redress for
11 their relatively small claims, which would otherwise be impractical to litigate on an individual basis.

12 **VI. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

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

14 Court approval of a class action settlement is a two-step process: (1) a preliminary review and
15 contingent approval by the trial court, and (2) after notice has been distributed to the class members, a
16 hearing and a detailed review that includes their responses. Manual for Complex Litigation (Fourth)
17 § 21.6 ("Manual"); Cal. Rules of Court, Rule 3.769(a); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794,
18 1800-1801 (1996). Thus, preliminary approval of the settlement is simply a conditional finding that the
19 settlement is within the range of acceptable settlements. *See, e.g.*, 4 Newberg on Class Actions § 11.25
20 (4th ed. 2002); Manual § 21.6. Applying the criteria for preliminary approval in this case reveals a
21 substantial basis for granting the preliminary approval.

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

23 In analyzing whether a settlement is fair and reasonable, courts consider a number of factors:
24 (1) the strength of the plaintiff's case balanced against the settlement amount; (2) the risk, expense,
25 complexity and likely duration of further litigation, the risk of maintaining class action status through
26 trial; (3) the extent of discovery completed and the stage of the proceedings; (4) the experience and view
27 of counsel; and (5) the reaction of the class members to the proposed settlement. *Kullar v. Foot Locker*
28 *Retail, Inc.*, 168 Cal. App. 4th 116 (2008) (quoting *Dunk*, 48 Cal. App. 4th at 1801). Indeed, a settlement
is initially "presumed to be fair" when (1) it "is reached through arm's-length bargaining; (2)
investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel

is experienced in similar litigation; and (4) the percentage of objectors is small.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 52 (2008) (quoting *Dunk*, 48 Cal. App. 4th at 1802).

The gross settlement amount here represents 19% of HNU’s maximum exposure and 73% of HNU’s realistic exposure on all class claims (excluding interest and PAGA) after considering Defendant’s actual and potential defenses on the merits and risks on class certification, as follows:

	GSA Allocation	Max Exposure	% Max	Realistic Exposure	% Realistic
Faculty	\$713,125	\$4,371,488	16%	\$1,015,552	70%
Expense	\$135,625	\$209,190	65%	\$142,249	95%
General	\$26,250	\$61,200	43%	\$41,310	64%
Totals	\$875,000	\$4,641,878	19%	\$1,200,911	73%

Given the substantial relief obtained for the Classes and the uncertainties and delays of litigation, the settlement meets the criteria for preliminary approval.

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

The settlement is the result of hard-fought extensive settlement negotiations between the parties conducted at arm’s length and informed by substantial factual and legal investigation. Class Counsel have extensive experience in wage and hour litigation, and, in particular, class actions alleging similar types of claims. Hammond Decl. ¶ 6. Class Counsel have spent a considerable amount of time prosecuting this case, including, but not limited to, drafting pleadings, investigating, researching applicable law, meeting and conferring with Defendant’s counsel, analyzing documents and data produced by Defendant, preparing for and attending a full-day mediation, and negotiating the settlement agreement. *See Id.* ¶¶ 8-28. The Parties were assisted by a well-respected and experienced mediator, Louis Marlin. *Id.* ¶ 27.

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

Comparison of the extent of the class recovery to the strength of Plaintiffs’ case is the most important factor in analyzing the fairness of the settlement. *Kullar*, 168 Cal. App. 4th at 130. The proposed settlement of \$875,000 easily passes the *Kullar* test. The \$713,125 of the GSA allocated to Part-time Faculty CMs represents 16% of HNU’s maximum potential exposure to their claims and 70% of HNU’s realistic exposure (excluding interest and PAGA). Part-Time Faculty CMs will receive an average recovery of \$1,892 gross and \$1,057 net. The \$135,625 of the GSA allocated to the ER Class represents 65% of HNU’s maximum potential exposure to their claims and 95% of HNU’s realistic exposure (excluding interest and PAGA). Each ER CM will receive an average of \$745 gross and \$416

1 net. Finally, the \$26,250 of the GSA allocated to the General Class represents 43% of HNU's maximum
2 exposure, and 64% of the realistic exposure to their claims (excluding interest and PAGA). General
3 Class Members will receive an average of \$64 gross, and \$36 net. Hammond Decl. ¶¶ 58, 62, 66.

4 Although Plaintiffs believe that the Classes have strong claims, they acknowledge the serious
5 obstacles presented to Plaintiffs' class claims by Defendant's arbitration and federal preemption defenses,
6 as well as the risks posed by certification and the merits of each claim, which warrant a settlement at less
7 than "complete victory" value, as addressed below.

8 **a. Part-time Faculty Class Claims:**

9 **i. Inaccurate Wage Statement Claim (Labor Code § 226(a)):** Plaintiffs contend, as non-
10 exempt employees, Part-time Faculty were entitled to wage statements that listed their total hours worked
11 and applicable hourly rates pursuant to Labor Code §§ 226(a)(2) and (a)(9). Hammond Decl. ¶ 37.
12 Moreover, as piece rate employees, Part-time Faculty were entitled to wage statements that included
13 piece rate information pursuant to Labor Code §§ 226(a)(3) and 226.2 (a). *Id.* Prior to fall 2021, HNU
14 did not track Part-time Faculty's hours worked and did not include on their wage statements any entries
15 for hours worked or applicable hourly rates. *Id.* ¶ 38. Moreover, HNU did not provide any of the required
16 piece rate information. Plaintiffs calculated Defendant's liability as to this claim as **\$1,187,050**. *Id.* ¶ 40.

17 **Class Certification and Merits Risks:** Plaintiffs applied a minimal 15% discount for the risk of
18 non-certification because wage statement claims are particularly well-suited to class certification. *See*
19 *Lubin v. Wackenhut Corp.*, 5 Cal. App. 5th 926, 958-60 (2016). Hammond Decl. ¶ 41. As to the merits,
20 Plaintiffs faced a risk that a court would find that Part-time Faculty CMs were properly classified as
21 exempt after September 9, 2020 pursuant to Labor Code § 515.7. This would reduce HNU's exposure
22 down to a third because Plaintiffs could only claim statutory penalties from April 16, 2020 through
23 September 9, 2020 i.e., less than 5 months, instead of the approximately 16-month period from April 16,
24 2020 to Fall 2021 based on which Plaintiffs calculated statutory penalties. Plaintiffs also faced the risk
25 that a court would find that only the initial \$50 penalty applied to each violation because HNU did not
26 receive notice that its wage statements were noncompliant. *Robinson v. Open Top Sightseeing San*
27 *Francisco, LLC*, No. 14-cv-00852, 2018 U.S. Dist. LEXIS 24556, at *52-58 (N.D. Cal. Feb. 14, 2018)
28 (finding that only the initial \$50 § 226(e) penalty applied because nothing in the record showed
defendant had notice that its wage statements were noncompliant). In addition, Defendant in its Answer
asserted the defense that it acted in good faith and thus did not "knowingly and intentionally" fail to

1 provide compliant wage statements.² Hammond Decl. ¶ 42. In light of Defendant's actual and potential
2 arguments, Plaintiffs applied a further 50% discount. Thus, Plaintiffs calculated HNU's realistic exposure
3 to this claim, after applying discounts, as **\$504,496**. *Id.*

4 **ii. Unpaid Wages Claim (Labor Code §§ 1194, 226.2):** Plaintiffs allege that Part-time
5 Faculty were employed on a contract-by-contract basis, between the dates specified in their Contracts.
6 Plaintiffs allege that the compensation set out in the contracts thus only covered work performed between
7 those dates. Those dates typically corresponded to the first and last day of classes, yet Part-time Faculty
8 Class Members performed work before and after classes, including to prepare course syllabi and submit
9 final grades. Plaintiffs also alleged that mandatory training that took place outside the contractual periods
10 of employment, was also unpaid. Hammond Decl. ¶ 43. Plaintiffs calculated HNU's maximum exposure
11 to the unpaid wages claim as **\$443,862** (excluding interest). *Id.* ¶ 44.

12 **Class Certification and Merits Risks:** Plaintiffs applied a 15% discount for the risk that they
13 would be unable to certify their claim on the theory that the course compensation included activities
14 performed before and after the dates listed in the contract, and on the theory that the amount of time each
15 Part-time Faculty spent on pre-Contract work and training would lead to individualized issues.
16 Hammond Decl. ¶ 45. As to the merits, Plaintiffs applied a further 40% discount for the risk that CMs'
17 compensation, whether a piece-rate or a salary, included the hours worked before and after the dates
18 specified in the Contracts because those hours were spent on tasks directly related to the course teaching
19 assignment, for the small risk that a court would find CMs are exempt, and for the risk that HNU would
20 successfully argue that Plaintiffs overstated damages by overestimating the number of unpaid hours
21 worked. *Id.* Applying the certification and merits discount, for settlement purposes, HNU's realistic
22 exposure on the unpaid wage claim is reduced to **\$226,370**. *Id.*

23 **iii. Rest Break Claim (Labor Code § 226.7):** Plaintiffs allege that Defendant compensated
24 Part-time Faculty Class on a piece-rate basis, and as such was required, but failed, to pay them hourly
25 and separately from the piece for the time spent on rest breaks pursuant to Labor Code § 226.2(a)(1).
26 Hammond Decl. ¶ 46. Thus, Part-time Faculty who worked 3.5 hours or more (Lab. Code § 226.7) were
27 entitled to hourly and separate pay for rest breaks. *Id.* Even if not piece-rate, Plaintiffs allege Part-time
28 Faculty were entitled to off-duty rest breaks because they were non-exempt. *Id.* Thus, Plaintiffs alleged

² Although this argument has been recognized by the federal district courts, it has been rejected by California state courts. *See, e.g., Kao v. Holiday*, 12 Cal. App. 5th 947, 962 (2017); *Furry v. East Bay Publishing, LLC*, 30 Cal. App. 5th 1072, 1085 (2018).

1 they were entitled to premium pay (at one hour of their average pay) for each unpaid rest break. *See*
2 *Amaro v. Gerawan Farming, Inc.*, No. 1:14-cv-00147-DAD-SAB, 2016 U.S. Dist. LEXIS 112540, at *5
3 (E.D. Cal. Aug. 23, 2016). *Id.* Plaintiffs calculated Defendant's liability on the rest break claim as
4 **\$422,555** (excluding interest). Hammond Decl. ¶ 47.

5 **Class Certification and Merits Risks:** On the theory that Part-time Faculty CMs were piece-
6 rate employees, Defendant could have argued whether piece-rate included rest break pay depended on
7 each CM's understanding of what the course rate covered, and individualized issues would predominate.
8 Hammond Decl. ¶ 48. Plaintiffs applied a nominal 10% discount for this. *Id.* On the theory that CMs
9 were entitled to rest breaks because they were non-exempt, Defendant could have argued that Plaintiffs
10 would be unable to certify a class because some CMs took rest breaks and inquiry into why some CMs
11 took rest breaks while others did not would lead to individualized inquiries. Plaintiffs applied a 30%
12 discount for this argument. *Id.* Thus, Plaintiffs applied an overall 20% discount (the average of the two)
13 for the risk of non-certification. *Id.* As to the merits, Defendant contended Plaintiffs would lose on the
14 merits because Part-time Faculty were properly classified as salaried non-exempt employees, at least as
15 of September 9, 2020, and that most Part-time Faculty CMs could have taken rest breaks if they wanted
16 to because for each hour of classroom instruction students are given a 10-minute break. Plaintiffs applied
17 a 30% discount based on this argument. *Id.* ¶ 49. After applying discounts for settlement purposes,
18 Plaintiffs determined HNU's exposure on the rest break claim is **\$236,631**. *Id.*

19 **vi. Waiting Time Penalties (Labor Code §§ 201-203):** Plaintiffs allege that because Part-
20 time Faculty were discharged on the last day of each term, upon completion of their Contract, yet were
21 not issued final paycheck until after the end of the Contract because HNU followed its regular payroll
22 practices. The regular payroll date generally fell on average 3 days after the end of Contract date. Thus,
23 Plaintiffs alleged that Part-time Faculty CMs were entitled to waiting time penalties under Labor Code §
24 203. As an alternative theory, Plaintiffs alleges that as a derivate result of HNU's failure to pay all wages
25 owed, including rest break premiums, resulted in 30 days of waiting time penalties for Part-time Faculty
26 CM who ceased teaching for Defendant. Hammond Decl. ¶ 50. Plaintiffs calculated that waiting time
27 penalties for late payments of wages at the end of each Contract is \$1,293,012, and failure to pay wages
28 at the time of discharge to formerly employed Part-time Faculty CMs is **\$1,976,400**. *Id.* ¶ 51. Plaintiffs
used the higher of the two exposures to evaluate risks and settlement value. *Id.*

Class and Merits Certification: Plaintiffs applied a minimal 10% discount for the risk of non-
certification. Hammond Decl. ¶ 52. Plaintiffs applied a further 50% discount on the merits because they

1 faced the following arguments: (1) there was no “discharge” at the end of each contract under *Elliot v.*
2 *Spherion Pac. Work, LLC*, 572 F.Supp. 2d 1169, 1176-77 (C.D. Cal. 2008), because the employment of
3 the majority of Part-time Faculty continued from term to term; (2) as to the alternative/derivate theory,
4 HNU had a defense that as of September 9, 2020 Part-time Faculty CMs were properly classified as
5 exempt, and were not owed any wages for pre and post-Contract work or rest breaks, and (3) HNU had
6 a good faith dispute that there was not a discharge, and/or no wages were due. The good faith defenses
7 could negate the willfulness requirement of Labor Code § 203. *Nordstrom Com’n Cases*, 186 Cal. App.
8 4th 576, 584 (2010) (holding trial court did not abuse its discretion in discounting the penalties on a §
9 203 claim because the defendant could avoid penalties by showing that a “good faith dispute” existed
10 regarding the claimed wages). Hammond Decl. ¶ 53. After applying discounts, for settlement purposes,
11 Plaintiffs determined that HNU’s exposure on the waiting time penalties claim is **\$889,380**. *Id.* ¶ 54.

12 **vii. Unreimbursed Expenses Claim (Labor Code § 2802):** As a result of the COVID-19
13 pandemic and the state of emergency declared in California, on or about March 16, 2020, HNU moved
14 classes online and began requiring CMs to teach/work from home. Classes continued to be taught online
15 and CMs continued to work remotely through most of 2021 and continuing into the beginning of 2022.
16 HNU, however, did not reimburse CMs for their necessarily incurred home office expenses until October
17 9, 2021, at which time HNU began reimbursing CMs \$20 per month. Plaintiffs estimate that CMs
18 incurred \$45 per month in business expenses. Plaintiffs calculated the unreimbursed expenses of Part-
19 time Faculty as **\$341,621**. Hammond Decl. ¶ 55.

20 **Class Certification and Merits Risks:** Plaintiffs acknowledge that there were varying practices
21 with regard to incurring expenses that pose an obstacle to class certification. Therefore, Plaintiffs applied
22 a 15% reduction for class certification; and a further 40% discount based on anticipated arguments that
23 even if expenses were incurred, they were voluntary and/or minimal. Hammond Decl. ¶ 56. After
24 applying these discounts, for settlement purposes, Plaintiffs calculated HNU’s realistic damages owed to
25 the Part-time Faculty Class as **\$174,227**. *Id.*

26 **viii. The Gross Settlement Allocated to Part-time Faculty Class Claims Is Fair and**
27 **Reasonable:** Plaintiffs calculated HNU’s maximum exposure on the Part-time Faculty Class claims
28 (excluding interest and PAGA) as \$4,371,488. Hammond Decl. ¶ 57. After class certification and merits
discounts, Plaintiffs estimated Defendant’s *realistic* exposure as \$2,031,103. *Id.* Plaintiffs then applied
a final 50% discount to the realistic exposure for the risk that Plaintiffs’ wage and hour claims are
preempted by the LMRA and/or must be arbitrated per the terms of the CBA, which reduced Defendant’s

1 realistic exposure to **\$1,015,552**. Hammond Decl. ¶ 58. The \$713,125 of the Gross Settlement Amount
2 (approx. 81.5% of the GSA) allocated to the Part-time Faculty CMs represents 16% of HNU's maximum
3 exposure, and 70% of HNU's realistic exposure (excluding interest and PAGA). *Id.* As stated above,
4 the average recovery per Part-time Faculty CM is \$1,892 gross, and \$1,057 net. *Id.*

5 **b. Expense Reimbursement Class Claim:**

6 On or about March 16, 2020, HNU also began requiring ER CMs i.e., non-faculty employees to
7 work from home. Hammond Decl. ¶ 59. Plaintiffs calculate that Expense Reimbursement CMs incurred
8 **\$209,190** in unreimbursed business expenses (excluding interest). *Id.* ¶ 60.

9 **Class Certification and Merits Risk:** Plaintiffs acknowledge that there are risks as to class
10 certification for the ER Class because there were varying practices with regard to incurring expenses by
11 Expense Reimbursement CMs. Accordingly, Plaintiffs applied a 15% discount based on class
12 certification risks and a 20% discount based on the merits risks, and calculated Defendant's realistic
13 exposure as **\$142,249**. Hammond Decl. ¶ 61.

14 **Gross Settlement Allocated to Expense Reimbursement Class is Fair and Reasonable:** The
15 ER Class will be allocated \$135,625 of the GSA (approximately 15.5%), which is 65% of HNU's
16 maximum exposure and 95% of its realistic exposure. The average recover per Expense Reimbursement
17 CM will be \$745 gross and \$416 net, which is an excellent result for the Expense Reimbursement CMs
18 who as of October 2021 began receiving \$20/month in expense reimbursement and returned to work in
19 person in 2022. Hammond Decl. ¶ 62.

20 **c. General Class Claim:**

21 From April 16 to May 10, 2020, HNU issued wage statements during two pay periods to 408
22 General CMs that did not contain the beginning pay period date. Hammond Decl. ¶ 63. HNU's maximum
23 exposure for statutory penalties on this claim is **\$61,200**. *Id.* ¶ 64.

24 **Class Certification and Merits Risk:** As stated above, Plaintiffs applied a minimal 10% discount
25 for the risk of non-certification because wage statement claims are particularly well-suited to class
26 certification. *See Lubin v. Wackenhut Corp.*, 5 Cal. App. 5th 926, 958-60 (2016). Hammond Decl. ¶ 65.
27 As to the merits, Defendant could have claimed that Plaintiffs could only be entitled to an initial \$50
28 penalty per violation as HNU was not on notice of its violation. HNU could have also argued that it acted
in good faith, fixed the violation voluntarily and before Plaintiffs' Complaint was filed, that the violation
was technical and inadvertent and thus was not "knowing and intentional" and did not cause injury.
Based on Defendant's actual and potential arguments, Plaintiffs applied a 25% discount on the merits.

Accordingly, Plaintiffs calculated Defendant's realistic exposure as **\$41,310**. *Id.*

Gross Settlement Amount Allocated to the General Class is Fair and Reasonable: \$26,250 of the GSA (approx. 3%) allocated to the General Class, which is 43% of the maximum exposure and 64% of the realistic exposure on their claim, is fair and reasonable. Hammond Decl. ¶ 66. Each General CM will receive approximately \$64 gross and \$36 net. *Id.*

d. The PAGA Allocation is Fair and Adequate:

Plaintiffs calculated Defendant's maximum exposure for PAGA penalties, applying the initial \$100 penalty per pay period, as **\$1,525,600** (assuming the Court would not allow "stacking" of PAGA penalties for each separate Labor Code violations). *Bernstein v. Virgin Am., Inc.*, Nos. 19-15382, 20-15186, 2021 U.S. App. LEXIS 6641, *35-36 (9th Cir. Mar. 8, 2021) (holding that "subsequent" violations for purposes of PAGA do not occur until employer has been notified that it is violating a Labor Code provision). *Castillo v. ADT, LLC*, No. 2:15-383 WBS DB, 2017 U.S. Dist. LEXIS 10579, at *11 (E.D. Cal. Jan. 24, 2017); Hammond Decl. ¶ 67.

The \$30,000 allocated to PAGA penalties represents approximately 2% of HNU's exposure to PAGA penalties, which is comparable to PAGA allocations in similar cases that received final approval, and which is fair and reasonable for several reasons. Hammond Decl. ¶ 68. First, HNU revised its policies and practices at issue in this lawsuit to bring them into compliance. HNU revised its compensation system applicable to part-time faculty first to hourly and then to per-course pursuant to a newly adopted CBA, which it vigorously argued complied with Labor Code § 515.7 requirements – a position which Plaintiffs recognize has potential merit. *Id.* HNU also began to reimburse its employees for at least some of their expenses, and fixed its wage statements to make them compliant (*id.*), thus fulfilling the purpose of PAGA which is to 'remediate present violations and deter future ones,' not to redress employees' injuries." *Kim v. Reins International California, Inc.*, 9 Cal. 5th 73, 86 (2020); *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (2016) (significant reduction to PAGA penalties appropriate because the law was not clear and there was thus no deliberate violation). Indeed, in an *Amicus Curiae* Brief filed June 16, 2017 in *Steven Price v. Uber Technologies*, No. BC554512 (Los Angeles Cnty. Super. Ct.), the Labor Commissioner stated that the main purpose of PAGA penalties is "in helping the Labor Commissioner discharge her mandate to: vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions or for employers that have not secured the payment of compensation, and to protect employers who comply with the law from those who attempt to gain a competitive advantage at the expense of their workers by failing to comply with

1 minimum labor standards. Cal. Labor Code § 90.5(a).” Thus, in light of HNU’s revision of its policies
2 and practices in an attempt to comply, the Court would likely reduce any award of PAGA penalties as
3 “unjust, arbitrary and oppressive, or confiscatory” under Labor Code § 2699 (i). Hammond Decl. ¶ 68.

4 Second, the overall settlement is robust, with gross and net payments of \$1,892 and \$1,057 per
5 CM; \$745 and \$416 per Expense Reimbursement CM; and \$64 and \$36 per General CM, which is what
6 courts look at when assessing amount attributed to PAGA penalties. *O’Connor v. Uber Techs., Inc.*, No.
7 201 F. Supp. 3d 1110, 1134 (N.D. Cal. Aug. 18, 2016) (where settlement for the class claims is robust,
8 the purpose of PAGA may be fulfilled because by providing fair compensation to class members, the
9 settlement has a deterrent effect on defendant and other employers, thus fulfilling the purpose of PAGA).
10 In *Gola v. University of San Francisco*, No. CGC-18-565018 (San Francisco Cnty. Super. Ct. March 3,
11 2021) a recent case brought by HammondLaw on behalf of adjunct instructors, the court found that
12 substantial monetary relief in form of statutory penalties under § 226(e) (and fees and costs plaintiff
13 would seek) acted as a sufficient punishment and deterrent, and awarded only 15% of the full PAGA
14 penalties—and this was a case where defendant did not have a good faith defense and did not change its
15 practices to comply after the lawsuit was filed. Hammond Decl. ¶ 69.

16 Third, Defendant contended that Plaintiffs’ claims for PAGA Penalties would fail for the same
17 reasons the underlying Labor Code claims would fail. *Id.* ¶ 70.

18 Fourth, PAGA claims, “can be stricken if they are found to be ‘unmanageable,’” and because only
19 CMs who actually incurred unpaid wages, unpaid premium pay, or unreimbursed expenses during a
20 particular pay period could recover PAGA penalties for those violations, Defendant could have disputed
21 that there is a manageable way to determine who was entitled to such penalties. *See, e.g., Raphael v.*
22 *Tesoro Ref & Mktg. Co.*, No. 2:15-cv-02862-ODW, 2015 U.S. Dist. LEXIS 130532, at *5 (C.D. Cal.
23 Sept. 25, 2015). Hammond Decl. ¶ 71.

24 Finally, allocation of 2% of the maximum value of PAGA penalties is comparable to PAGA
25 allocations in similar cases that received final approval including *Mooiman et al. v. Saint Mary’s College*
26 *of California*, No. C19-02092 (Contra Costa Cnty. Super. Ct. June 10, 2021) (finally approving \$30,000
27 carve out for PAGA Penalties, representing 1% of the maximum PAGA penalties, where “the record
28 indicates that defendant changed many of the policies at issue before the action was brought, that there
is a substantial monetary award which in part serves the deterrent function of a penalty, and that defendant
had some arguments of “good faith,” that would mitigate penalties”). Hammond Decl. ¶ 72.

///

1 **3. The Risk, Expense, Complexity and Likely Duration of Further Litigation**
2 **Support the Fairness and Reasonableness of the Settlement**

3 If the parties continued to litigate this case, Plaintiffs would have to clear hurdles including a
4 motion to compel arbitration and a motion on the issue of LMRA preemption, other pre-trial dispositive
5 motions, and class certification. Whichever claims – if any – cleared these hurdles would face trial.
6 Regardless of the outcome at trial, the losing party would likely appeal, given that some of the central
7 legal issues in this case have not been conclusively addressed by an appellate court. Litigation therefore
8 could take years. Plaintiffs’ Counsel has been litigating a case involving some of the same issues as those
9 involved in this case, including the issue of LMRA preemption, for more than four years and it is current
10 pending on appeal. This settlement provides an early resolution of a dispute, and CMs will recover in
11 the relatively near future if the settlement is finally approved. Hammond Decl. ¶ 77.

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

13 As described in detail in Hammond Declaration, the parties have engaged in extensive
14 investigation and informal discovery, and were adequately informed to make the decision to settle this
15 case on the proposed terms. Hammond Decl. ¶¶ 12-28.

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

17 As discussed above, Class Counsel has extensive experience in class action litigation, and, in
18 particular, wage-and-hour class actions brought on behalf of adjunct instructors, and have been
19 determined by numerous courts to be adequate class counsel. Hammond Decl. ¶ 6. Class Counsel has
20 represented thousands of adjunct instructors in over 30 similar unpaid wage cases since 2016, and
21 recently litigated one such case all the way through trial and the currently pending appeal. *Id.* Class
22 Counsel considers the settlement to be fair, reasonable and adequate. *Id.* ¶ 79. The average gross recovery
23 per Part-time Faculty CM is \$1,892, and the average net recovery is \$1,057. *Id.* ¶ 58. The average gross
24 recovery per Expense Reimbursement CM will be \$745, and the average net recovery will be \$416. *Id.*
25 ¶ 62. The average gross recovery per General CM will be \$64, and the average net recovery will be \$36.
26 *Id.* ¶ 69. These are robust recoveries, especially given that HNU implemented changes to many of the
27 challenged policies, and given that the General CMs suffered only a very brief, technical violation.

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

 It is premature to address this factor, since notice has not yet been sent out. The settlement,
however, confers substantial benefit on the CMs and reasonably tailors each CM’s claim to the amount
they will receive. This promises an overall positive response.

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

2 The proposed Notice here meets the standards of constitutional due process since it provides all
3 the information a reasonable person would need to make a fully informed decision about the settlement.
4 *See Mullane v. Central Hanover Bank & Trust*, 339 U.S. 306, 314 (1950). The proposed Notice informs
5 CMs of (1) the material terms of the settlement, (2) the proposed fees and costs of Class Counsel and for
6 settlement administration, (3) the proposed service awards to the Named Plaintiffs; (4) how CMs may
7 opt out of, or object to the Settlement; (5) details about the court hearing on settlement approval, and (6)
8 how CMs can obtain additional information. *See* Cal. Rules of Court, Rule 3.766 and **Exhibit A** to the
9 Settlement Agreement. In addition, the proposed Notice contains information about each settling class
10 member's award under the distribution formula and how they can challenge the data used in calculating
11 their settlement awards, and the tax treatment and possible tax consequences of their awards. Therefore,
12 the Court should approve the Notice.

13 The procedure for distribution of notice meets the standard requiring that the notice has "a
14 reasonable chance of reaching a substantial percentage of the CMs." *Cartt v. Super. Ct.*, 50 Cal. App. 3d
15 960, 974 (1975). Here, the Notice will be sent by first class mail to the most recent address of each CM
16 (SA § 10.3) and skip tracing will be employed for all Notices returned as undeliverable (SA § 10.4). As
17 such, the Notice is likely to reach most, if not all, CMs.

18 **D. The Service Award to Each Class Representatives Is Reasonable**

19 Plaintiffs will request a service award of \$5,000 each to recognize the time and effort they
20 expended on behalf of the Class, the reputational risk associated with suing their employer, and the
21 general release they are giving Defendant. Hammond Decl. ¶ 85. The requested service awards fall well
22 within the range of incentive payments typically awarded to in similar class actions. *See e.g., Cellphone*
23 *Termination Fee Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming incentive awards of \$10,000).

24 **E. The Requested Attorneys' Fees and Costs Are Reasonable**

25 In addition, Plaintiffs' Counsel will request attorneys' fees of not more than \$306,250 (*i.e.*, 35%
26 of the GSA). SA § 6. This fee amount is fair, reasonable and represents an amount that is typically
27 approved in class actions by California courts. *See, e.g., Martin v. AmeriPride Servs.*, No. 08-cv440-
28 MMA (JMA), 2011 U.S. Dist. LEXIS 61796, *23 (S.D. Cal. June 9, 2011) ("court may award in the 30-
40% range in wage and hour class actions that result in recovery of a common funder under \$10

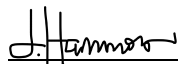
1 million.”).³ Plaintiffs also request reimbursement for out-of-pocket litigation costs and expenses incurred
2 by Class Counsel up to \$20,000. Hammond Decl. ¶ 82. If the Court grants preliminary approval and
3 authorizes the dissemination of notice of the settlement to the class, Class Counsel anticipates filing a
4 Motion for Attorneys’ Fees and Costs that will be scheduled to be heard following the notice process.
5 *Id.* ¶ 83.

6 **VII. CONCLUSION**

7 The settlement provides substantial relief for the Classes and is clearly within the range of
8 acceptable settlements. Accordingly, Plaintiffs respectfully request that the Court preliminarily approve
9 the settlement, approve the proposed Class Notice, and schedule a final approval hearing.

10 Dated: September 9, 2022

Respectfully submitted,

11 

12 Julian Hammond

13 *Attorneys for Plaintiffs and the Putative Classes*

14
15
16
17
18
19
20
21
22
23
24
25
26 ³ The Court need not decide now the amount of attorneys’ fees and costs or service awards to award.
27 Rather, at the current preliminary approval stage, the Court need only satisfy itself that the overall
28 settlement is within a range that could warrant final approval. That standard is met here.