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8
9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES**
11

12 **ALVALYN LUNDGREN**, individually and on
13 behalf of all others similarly situated,

14 Plaintiff,

15 vs.

16 **OTIS COLLEGE OF ART AND DESIGN**, a
17 California Corporation,

18 Defendant.
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CASE NO. 22STCV14633

**DECLARATION OF JULIAN HAMMOND
IN SUPPORT OF PLAINTIFF'S MOTION
FOR ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: January 12, 2023

Time: 10:00 a.m.

Dept. 14

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 Alvalyn Lundgren (“Plaintiff”) and two settlement classes:
9 (a) 665 “Adjunct Class Members” who all non-exempt part-time faculty and instructors employed by
10 Defendant in California during at any time during the period from August 1, 2017 through August 3,
11 2022 (the “Adjunct Class Period”); and (b) 700 “Reimbursement Class Members” who are all current or
12 former employees of Defendant in California other than Adjunct Class Members who were required to
13 work from home at any time during March 4, 2020 through August 3, 2022 (the “Reimbursement Class
14 Period”) who allegedly did not receive proper expense reimbursement (Adjunct Class Members and
15 Reimbursement Class Members are collectively referred to as “Class Members” or “CMs”).

16 4. I have no knowledge of the existence of any conflicting interests between my firm and
17 any of its attorneys, on the one hand, and Plaintiff or any Class Members, on the other.

18 5. I submit this declaration in support of Plaintiffs’ Motion for Preliminary Approval of Class
19 Action Settlement.

20 II. ATTORNEY EXPERIENCE

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

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

4 **III. OVERVIEW OF THE LITIGATION**

5 **A. Procedural History**

6 8. On October 8, 2021, Plaintiff filed her PAGA Notice with the LWDA seeking PAGA
7 penalties for Defendant’s (1) failure to pay wages for all hours worked as required under Labor Code §§
8 226.2 and 1194 and Wage Order No. 4-2001 § 4; (2) failure to authorize and permit paid rest breaks and
9 pay premium pay as required under Labor Code §§ 226.2 and 226.7 and Wage Order No. 4-2001, §§ 4,
10 12; (3) failure to issue accurate itemized wage statements in violation of Cal. Labor Code §§ 226(a) and
11 (e) and 226.2; (4) failure to pay compensation due on discharge from employment in violation of Cal.
12 Labor Code §§ 201-203; and (5) failure to reimburse business expenses in violation of Cal. Labor Code
§ 2802. Thereafter, the parties agreed to toll Plaintiff’s PAGA and class claims in order to attend early
mediation. A copy of Plaintiff’s PAGA Notice is attached as **Exhibit 2**.

13 **B. Informal Discovery**

14 9. Prior to mediation, Defendant produced key data and documents including Plaintiff’s
15 personnel file, payroll calendars, versions of the faculty and employee handbooks in effect during the
16 Class Period, copies of the two Collective Bargaining Agreements (“CBA”) applicable to some CMs
17 during the Class Period, and Defendant’s Travel and Business Expense Reimbursement Policy applicable
18 to CMs. Defendant also produced spreadsheets showing CMs’ course assignments and pay information
from the start of the Class Period up to and including the Spring 2021 semester.

19 10. Plaintiff’s counsel conducted their own investigation and gathered additional documents
20 and information. Plaintiff’s counsel also conducted a survey regarding work performed prior to the first
21 day of classes, and expenses incurred in teaching online courses before and during Covid-19, the results
of which further inform Plaintiff’s analysis of Otis’ exposure.

22 11. From informal discovery, Plaintiff ascertained that Otis employed CMs on a term-by-
23 term basis pursuant to uniform employment contracts (“Contracts”). The Contracts provided the
24 assignment start- and end-dates, the flat-rate amount to be paid, and the applicable pay dates The
25 Contracts provided that Otis has the right to terminate the Contracts if “enrollment is insufficient to offer
26 a given class, or that a given class offering is not feasible for instructional, educational, or scheduling
27 reasons” and that “[a]t the expiration of this contract...Otis . . . has the sole discretion whether to offer
28

1 you a new contract, and to set the terms of that offer.” Otis generally did not issue the final paycheck on
2 the day the Contracts ended, but rather waited until the next regular pay date.

3 12. From documents produced, Plaintiff ascertained that while the Contracts began on specific
4 dates (*i.e.*, the first day of classes), Otis required Adjunct CMs to perform work prior to the start of
5 classes, including to prepare syllabi and other course materials.

6 13. From the exemplar wage statements, Plaintiff confirmed that Otis did not include any
7 entries for hours actually worked by Adjunct CMs prior to Fall 2021. Rather, Otis simply included a flat
8 equal amount on the bi-weekly payments that produced the flat rate per-course amount provided for in
9 the respective Contract once the semester was completed. Under “Rate” the wage statements are
10 generally blank and under “Hours or Units” the wage statement is generally blank, or it listed the number
11 of units associated with the course. Beginning with the fall semester 2021, Otis revised its compensation
12 practices with respect to Adjuncts who worked as Continuing Education Faculty (“CEF”). Otis
13 reclassified CEFs as hourly employees and changed their compensation from per course/per unit to
14 hourly. Otis also began tracking their hours and including entries for total hours worked and hourly rates
15 on their wage statements. Otis also asked CEFs to track hours worked the week before classes and the
16 week after finals and paid for these hours.

17 14. Plaintiff also alleged that that during the Adjunct Class Period, Otis did not fully reimburse
18 Adjunct CMs who taught online courses for the cost of home internet and cellular telephones, necessarily
19 incurred as a result of teaching courses online.

20 15. Finally, Plaintiff alleged that beginning on or about March 4, 2020, Reimbursement Class
21 Members were required to work remotely. Otis knew or should have known that Plaintiff and
22 Reimbursement Class Members would require internet, home or mobile phones, and office supplies to
23 carry out their job duties. Otis did not maintain any sort of reimbursement policy, aside from a travel
24 reimbursement policy that did not cover home office expenses incurred by Reimbursement Class
25 Members.

26 **Mediation**

27 16. On February 22, 2022, the Parties participated in a mediation session with Ms. Lisa
28 Klernan, an experienced mediator who has mediated numerous wage-hour class and PAGA actions.
Prior to the mediation, the parties submitted detailed mediation briefs supported by documents obtained
in informal discovery.

17. On May 3, 2022, Plaintiff filed her Complaint alleging class claims for the labor code
violations alleged in her PAGA Notice, as well as a claim for PAGA penalties.

1 **Arbitration Defense**

2 18. At mediation, Defendant vigorously contended that Plaintiff's class claims were barred
3 by the arbitration clause it required each employee to agree to in their Contracts as part of their
4 employment. During the Class Period, each Contract contained the following clause:

5 To the fullest extent permitted by law, both you and Otis College agree that any
6 dispute or controversy arising out of or in connection with this Agreement or
7 your employment with Otis College will be resolved exclusively by final and
8 binding arbitration in Los Angeles, California. Such arbitration shall be
9 conducted pursuant to the procedures required by California law. To the extent
10 they are not inconsistent with the procedures required by California law, the
11 procedures of the [JAMS] Employment Arbitration Rules shall apply in such
12 arbitration.

13 19. Defendant contended that the Court would find its arbitration clause enforceable and that
14 Plaintiff's Adjunct class claims would be barred as well. Notwithstanding the possibility that Plaintiff
15 could, in principle, file mass arbitrations against Otis, Plaintiff believed a discount was warranted in
16 settlement.

17 **Preemption Defense**

18 20. Defendant contended that the Adjunct claims are preempted by § 301 of the Labor
19 Management Relations Act ("LMRA"). Defendant asserted that Plaintiff's claims are inextricably
20 intertwined with the collectively bargained CBAs, and that the LMRA preempts state law that conflicts
21 with federal law. Defendant argued that although Plaintiff's California wage and rest break claims are
22 purportedly founded on state law rights, their success (or defeat) is necessarily dependent on the
23 interpretation of the CBAs and therefore preempted under the LMRA.

24 21. Plaintiff contended that resolution of Plaintiff's state-law claims does not require
25 interpretation of the CBA because the CBA makes no mention of wage statement requirements, expense
26 reimbursement, or payment upon discharge, or any other claim alleged in the Complaint, and therefore
27 there is no provision of the CBA that could be interpreted to resolve these claims.

28 **Exemption Defense**

 22. Finally, Defendant contend that Adjuncts are exempt under Labor Code § 515.7, effective
September 9, 2020, and its predecessor, Labor Code § 515(a), which requires that part-time adjuncts who
meet the "duties test" and the "salary test" are exempt from Labor Code §§ 226(a) and 1194. The "duties
test" requires that part-time adjuncts are primarily engaged in a profession requiring discretion and
independent judgment. IWC Wage Order 4-2001, §1(c). The "salary test" requires that the employee earn
"[a] monthly salary equivalent to no less than two times the state minimum wage for employment in
which the employee is employed for at least 40 hours per week." Labor Code § 515.7(a)(2)(A).

23. Labor Code § 515.7 created two, new, alternative tests under which instructors who meet the duties test and are paid on a salary basis may be classified as exempt professionals: (1) a year-dependent, “classroom hour” test, wherein each “classroom hour,” including such activities as class preparation and grading, is compensated at a minimum rate of \$117 per classroom hour in 2020, \$126 in 2021, \$135 in 2022, and for 2023 and thereafter, “a percentage increase to the rate” for 2022 pegged to the percentage increase in the state minimum wage prescribed by statute; and (2) a “collective bargaining agreement” test whereby the instructor is paid pursuant to a CBA and “the classification of employment in a professional capacity is expressly included [in the CBA] in clear and unambiguous terms.” Labor Code § 515.7(a)(2)(B), (C).

24. Defendant could have contended that the course rate is a salary because Adjuncts received a predetermined amount each pay period that was not subject to change within each pay period based on the number of hours Adjuncts taught. Defendant also could have contended that the CBA clearly and unambiguously classified Adjunct as exempt employees.

25. Plaintiff argued that Adjunct’s piece rate compensation does not qualify as a salary because the term connotes a predetermined amount that is not subject to reduction based upon the quantity or quality of work. Here, Otis retained the right to cancel classes if enrollment did not meet predetermined targets and adjunct instructors’ compensation could be reduced by Otis pursuant to its policy regarding compensation for adjunct faculty when courses were cancelled due to low enrollment. These practices mean that adjunct instructors’ pay was subject to reduction based on quantity of work performed and, therefore, cannot be considered a salary. Thus, because CMs were not paid a salary, they cannot meet the requirements of the professional exemption set out in Labor Code § 515, or as modified by Labor Code § 515.7.

26. Plaintiff further argued that even the course rate was a salary, (i) Class Members rarely (if ever) met the salary test under Labor Code § 515 (“monthly salary equivalent to no less than two times the state minimum wage for employment”), and (ii) at no time has any Class Member been compensated at the minimum classroom hour rate in Labor Code § 515.7.

27. Finally, Plaintiff argued that with respect to CEF, they are not subject to a collective bargaining agreement and, thus, cannot meet the CBA test under Labor Code § 515.7. Accordingly, Labor Code § 515.7 does not operate to shorten Defendant’s liability.

IV. PLAINTIFF’S DAMAGES ANALYSIS

28. Plaintiff calculated Otis’s maximum liability (before applying any discounts based on merits defenses and the risk of non-certification) as follows:

Unpaid Wages – Labor Code §§ 1194 and 226.2

29. Plaintiff alleged that during the Class Period, Otis paid Adjunct CMs a fixed amount per course. Plaintiff therefore contended that Adjunct CMs were not salaried, but were rather paid on a piece rate basis, with the piece being the course. As a result, Adjunct CMs were paid for the hours of course instruction only and were not paid hourly and separately for non-teaching tasks, such as preparing for class, grading, office hours, attending department meetings, in violation of Labor Code §§ 226.2 and 1194.

30. During the discovery and investigation phase, Plaintiff concluded that Adjunct CMs' Contracts explicitly required that Adjunct CMs would "prepare the syllabus and any supporting materials" and to "be available to students outside of class hours regarding academic issues." As a result, for purposes of settlement, Plaintiff limited her claim to work performed prior to the first day of classes on the basis that the only dates on the Contracts indicating the start of the contract were the first day of classes and, thus, compensation in the Contract was also only for that period, and not for work performed prior to that period.

31. Plaintiff analyzed course data provided by Defendant and calculated that Adjunct CMs taught 2,752 courses between Fall 2017 and Spring 2021 semesters. Plaintiff extrapolated out to the end of the Class Period for a total of 3,602 courses during the Class Period. Plaintiff multiplied 3,602 courses by the 10 hours of work Plaintiff estimated Adjuncts performed prior to each course, and multiplied that by the average minimum wage during the Class Period (\$14/hour) for total unpaid wages of **\$504,366**.

32. **Class Certification Discount:** Defendant contended that this claim was not certifiable because there would be variability in the amount of time actually spent, if any, in preparing to teach the course. In addition, Defendant contended that Adjunct CMs compensation was a salary that incorporated all duties, including prior to the first day of the course. Plaintiff countered that the variability in the amount of time spent prior to the first day of courses is a matter of damages, and therefore does not impact certification. Plaintiff applied a 25% discount for this risk, which reduced Otis's realistic exposure on the unpaid wage claim to \$378,275.

33. **Merits Discount:** As to the merits, Defendant contended that a court would find, as a matter of law, that the salary covered pre-and-post-contract work. Plaintiff believed that there was only a slight chance of Defendant's argument being successful because, as discussed in previous paragraph, Contracts provided specific beginning and end dates for each appointment and set compensation for the responsibilities under each Contract. Thus, allowing for the possibility that the salary and/or piece covers work performed before the beginning of the contract would amount to averaging or borrowing

1 compensation contractually due for some work hours to meet the minimum wage requirement for other
2 uncompensated hours, which is not allowed under California law. Defendant also contended that
3 Plaintiff's estimate of 10 hours of per-and-post Contract work was an exaggeration, and that little or no
4 work was required because many Adjunct CMs were experienced instructors who had taught the same
5 course multiple times. Plaintiff recognized some risk from this argument and applied a 25% discount,
6 which reduced Otis's realistic exposure on the unpaid wage claim to **\$283,706**.

7 **Rest Break Claims – Labor Code §§ 226.2, 226.7**

8 34. As stated above, Plaintiff alleges that Defendant paid Adjunct CM's a Course Rate which
9 was a form of a piece-rate. Plaintiff alleged that Defendant did not pay Adjuncts hourly and separately
10 for rest breaks, in violation of Labor Code § 226.2, entitling them to premium for each class that was 3.5
11 hours or longer. Plaintiff also alleged that Adjuncts were entitled to rest breaks as non-exempt employees
12 but Otis imposed uniform policies and procedures that impeded them from taking rest breaks, in violation
13 of IWC Wage Order 4-2001 §12.

14 35. Plaintiff analyzed course data provided by Defendant and calculated that Adjunct CMs
15 taught 24,464 3.5-hour classes between the Fall 2017 and Spring 2021 semesters. Plaintiff extrapolated
16 out to the end of the Class Period for a total of 32,026 3.5-hour classes. Assuming a 100% violation rate,
17 Defendant's maximum exposure on this claim, using Plaintiff's average hourly rate of \$50.60,
18 Defendant's maximum exposure is **\$1,620,495**.

19 36. **Class Certification:** Defendant could have argued that even if Adjunct CMs were paid
20 on a piece-rate, the piece-rate included time spent on rest breaks, and individualized issues would
21 predominate because what non-teaching time was included in the piece-rate would depend on each
22 Adjunct CMs understanding of what the piece covered. Plaintiff applied a nominal 10% discount for
23 these arguments, as he believed they had little chance of success because California prohibits an employer
24 from building rest break pay into piece-rate and compensation owed and/or what piece rate includes is a
25 matter of contract and/or interpretation of what the piece rate formula actually covers, not individual
26 understanding.

27 37. As to Plaintiff's claim that Adjuncts were entitled to rest breaks as non-exempt employees
28 but the nature of their employment and policies and/or practices of Otis impeded them from taking rest
breaks, Defendant argued Plaintiff would be unable to certify a class because Otis did not maintain rest
break records which would lead to individualized issues of whether some CMs took rest breaks while
others did not. Otis also argued that Adjuncts could have taken a timely off-duty rest break had they
chosen to, and any missed rest breaks were voluntary. Plaintiff applied a 30% discount for this argument

1 (which was riskier than the piece rate argument because it relied more heavily on testimony regarding
2 Class Members' experiences). Plaintiff applied an average discount of 20% which reduced Otis' liability
3 to \$1,296,396.

4 38. **Merits:** As to the merits, Defendant contended that Plaintiff and Adjunct CMs were
5 properly classified as exempt employees and they were not entitled to rest breaks. As explained above,
6 Plaintiff recognized some risk on the argument the Course Rate was a salary because it appeared that
7 Adjunct CMs did receive a predetermined amount each pay period that was not subject to change within
8 each pay period based on the number of hours taught. Defendant also contended that even if Adjuncts
9 were entitled to rest breaks, a 100% violation rate was highly unrealistic. Plaintiff applied a further 50%
discount which reduced Otis's realistic exposure on the rest break claim was reduced to **\$648,198**.

10 **Wage Statements Claims - Labor Code §§ 226(a), (e), 226.2, and 204**

11 39. Plaintiff alleges that during the Adjunct Class Period, Adjunct CMs, as non-exempt piece
12 rate employees, were entitled to receive accurate itemized wage statements for each pay period during
13 which they worked, and to receive wage statements that listed their hours worked, hourly rate, and piece
14 rate information, pursuant to Labor Code § 226(a) and 226.2(a). However, the wage statements that Otis
15 issued to Adjuncts (other than wage statements issued to CEFs starting in Fall 2021) did not include any
16 of this required information.

17 40. Plaintiff alleged that Defendant's practice with respect to the information included (and
18 omitted) on the wage statements was not a result of an unintentional payroll error, or clerical mistake,
19 but rather a result of Defendant's regular compensation policies and its policy of misclassifying Adjuncts
20 as exempt. Indeed, Otis could not have met the §226(a)(2) and (a)(9) requirements during the because it
21 didn't track course-related time worked by Adjuncts. As such, the violation of Labor Code § 226(a) was
22 knowing and intentional. Plaintiff also alleged that Adjunct CMs suffered injury as a result, because they
23 could not determine from the wage statements alone the number of actual hours worked, or an applicable
24 hourly rate.

25 41. According to data provided by Defendant, Otis issued a total of 3,845 wage statements
26 between Spring 2020 term and Spring 2021 term to 320 Adjunct period. Plaintiff extrapolated out to the
27 end of the Class Period for a total of 5,940 wage statements. Plaintiffs multiplied 320 initial pay periods
28 by \$50 penalty (\$16,000) and 5,620 subsequent wage statements by the \$100 penalty, for total statutory
damages of \$578,000.

1 42. **Class Certification Discounts:** Plaintiff applied a 10% discount for the risk of losing at
2 the class certification because wage statement claims are particularly well-suited to class certification.
3 This reduced Otis' exposure to \$520,200.

4 43. **Merits Discounts:** Defendant contended that that Adjunct CMs were properly classified
5 as exempt employees, and were not be entitled to wage statements that include a breakdown of their
6 hours and applicable hourly rates in effect or piece-rate information. Otis further argued that the putative
7 class did not suffer injury as a result of failing to provide compliant wage statements as required under
8 Labor Code § 226(e). Defendant also could have contended that the maximum applicable statutory
9 penalty was the initial penalty of \$50 per wage statement because Plaintiffs had not established that
10 Defendant ever received notice from the labor commissioner or a court, and so there are arguably no
11 "subsequent" violations. Plaintiff applied a 25% discount for these arguments, which reduced Otis's
12 exposure on this claim to **\$390,150**.

13 **Waiting Time Penalties - Labor Code § 203**

14 44. Plaintiff alleges that Adjunct CMs' Contracts were for a definitive period of time, which
15 ended on the last day of the semester, and therefore CMs were discharged for purposes of Labor Code §
16 201 on that date. However, Otis paid adjuncts according to its regular payroll schedule, which resulted
17 in the final paychecks being issued on average 5 days after the semester end date, thereby failing to
18 comply with the timely final payment obligation of § 201(a). Otis issued final paychecks at least 11 days
19 after the end of each Contract, thereby failing to comply with the timely final payment obligation of
20 Labor Code § 201(a). As a result, Otis owes Adjunct CMs waiting time penalties pursuant to Labor Code
21 § 203.

22 45. Based on data provided by Defendant, Plaintiff calculated Adjunct CMs' daily rate as
23 \$111.34 by dividing average earnings per pay period (\$890.70) by the average number of days (8) that
24 Adjunct CMs worked during each pay period. Based on data provide by Otis, there were 1,544 unique
25 Adjunct CMs who were issued contracts during the relevant time period. Otis is liable 11 days of waiting
26 time penalties for all 1,544 unique Adjuncts who taught (\$111.34 x 1,544 discharges) which equals
27 **\$1,890,956**.

28 46. **Certification Discount:** Plaintiff applied a minimal 10% discount for the risk of non-
certification because their theory of liability is amenable to class treatment as the relevant legal and
factual issues can be determined by facts common to all Adjunct CMs. Additionally, whether the
contracts are for a definitive period of time, and what the end date of the contract is, are matters of
construction of the Contracts, the answer to which will apply equally to all Adjunct CMs. Whether

Adjunct CMs were discharged at the end of a contract for a definitive period is a question of law, and whether the late payment was willful is a question that can be determined through PMK testimony. Applying this discount reduced Otis' liability to **\$1,701,860**.

47. **Merits Discount:** Plaintiff applied a 50% discount on the merits based on Defendant's potential major defenses that (1) there was not an actual discharge at the end of each Contract for those Adjuncts who worked continuously from term to term maintained an employment relationship with Otis; and (2) that any alleged failure to pay all wages due upon discharge was not willful because Otis believed in good faith that Adjuncts were exempt and therefore Adjuncts were not entitled to waiting time penalties, which could negate the willfulness requirement of Labor Code § 203. Applying this discount, reduced Otis' liability to **\$850,930**.

Adjunct Unreimbursed Expenses Claim - Labor Code § 2802

48. Plaintiff alleged that Otis did not reimburse Adjunct CMs who taught online courses during the Adjunct Class Period for their expenses incurred teaching courses from home including internet and cell phone expenses. Starting in March 2020, and until June 30, 2021, as a result of COVID-19, Otis required and expected all Adjunct Class Members to teach courses remotely from home. Plaintiff contends that under Labor Code § 2802, Adjunct CMs were entitled to be compensated for business expenses, including the cost of home internet, necessarily incurred as a result of teaching courses online. Although Otis had a Travel and Business Expense Reimbursement Policy applicable to Adjunct CMs, Plaintiff alleged that it did not apply to the monthly remote work expense Adjuncts incurred teaching courses from home.

49. Based on data provided by Defendant, approximately 9% of the 3,602 courses taught by Adjunct CMs during the Adjunct Class Period, or 324 courses, were online. Each course was on average 2.5 months long, for a total of 810 months. Plaintiff estimated that Adjuncts incurred \$30 per month on business-related expenses or \$24,317 for the entire Adjunct Class Period.

50. Plaintiff calculated Defendant's potential liability for remote work expenses incurred by all Adjuncts during the Covid-19 shutdown as follows: Approximately 320 Adjuncts taught remotely between March 4, 2020 and June 30, 2021, a 16-month period. Plaintiff estimates that Adjuncts (who were part-time employees) incurred \$30 per month in home office expenses. Accordingly, $320 \times \$30 \times 16 = \$153,600$ in unreimbursed business expenses. Otis' total liability for unreimbursed expenses is thus **\$177,918**.

51. **Adjunct Class Certification Risk:** Plaintiff applied a 25% discount for class certification based on the fact that there were varying practices with regard to expenses incurred by Adjuncts, whether

those expenses were reasonable, whether Adjuncts submitted those expenses for reimbursement, and whether Otis reimbursed them, would lead to individualized issues. This reduced realistic damages to **\$133,438**.

52. **Adjunct Class Merits Risk:** As to the merits, Plaintiff applied a further 25% discount based on anticipated arguments that even if expenses were incurred, these were voluntary and/or minimal. This reduced realistic damages to **\$100,079**.

Adjunct CMs Maximum and Realistic Exposure

53. Plaintiff calculated maximum damages (excluding PAGA penalties) for the Adjunct Class as \$4,771,736 and realistic exposure as \$2,273,063. Plaintiff then applied a further 50% discount to the realistic exposure for the risk that the Court would find Otis' arbitration agreement barred Plaintiff's class claims, which reduced its realistic liability to \$1,136,532. Otis' maximum and realistic liability on each claim is as follows:

Labor Code Section	Maximum Damages	Realistic Exposure
Unpaid Wages (§§ 226.2 / 1194)	\$504,366	\$283,706
Rest Breaks (§ 226.7)	\$1,620,495	\$648,198
Wage Statements (§§ 226(a), (e))	\$578,000	\$390,150
Waiting Time Penalties (§ 203)	\$1,890,956	\$850,930
Unreimbursed Expenses (§ 2802)	\$177,918	\$100,079
Total	\$4,771,736	\$2,273,063
After 50% arbitration discount		\$1,136,532

54. The 80.81% (\$800,019) of the Gross Settlement allocated to Adjuncts represents 17% of Defendant's maximum exposure and 70% of its realistic exposure. Under the Settlement Agreement, if approved as submitted, \$566,000 will be available for distribution among the two Classes (after deductions of fees, costs, incentive award, Administration fees, and PAGA payments). Of this amount, approximately 80.81% (\$457,385) will be allocated to the Adjunct Class on a *pro rata* basis based on the number of pay periods worked during the Adjunct Class Period. This formula relies upon objective evidence of each Adjunct Class Member's employment history, which Class Members can easily review and confirm for themselves. This information is readily available from Defendant's records, and the Settlement Administrator can apply the formula in a fair and transparent manner.

55. For Adjunct Class Members, the average net recovery is \$687.80² and the average gross recovery is \$1,203.04.³ The Adjunct Class worked approximately 16,500 pay periods, and the value of each pay period is \$27.72 net⁴ and \$48.49 gross.⁵ An Adjunct CM who worked the entire Adjunct Class Period - approximately 30 weeks per year for 5 years - can expect to receive approximately \$2,079.02.⁶ These are significant recoveries especially when considering Defendant's arbitration defense and many other defenses. In my experience, this settlement is fair, adequate, and reasonable for the Class.

56. The average recovery per Adjunct CM compares favorably with similar cases where plaintiffs faced risk based on an arbitration agreement including *Chindamo v. Chapman University*, Case No. 30-2020-01147814-CU-OE-CXC (Orange County Superior Court, April 15, 2022) (finally approving wage and hour class action settlement with an average recovery per adjunct of \$627.73 gross and \$361.69 net); *Merlan et al. v. Alliant Int'l University*, Case No. 37-2019-00064053-CU-OE-CTL (San Diego Superior Court, November 2, 2021) (finally approving wage and hour class action settlement with an average recovery per adjunct of \$886 gross and \$511.62 net); and *Harris-Foster v. University of Phoenix, Inc.*, Case No. 19019028 (Alameda County Superior Court, March 17, 2021) (finally approving wage and hour class action settlement with an average recovery per adjunct average recovery of \$828 gross and \$516 net).

57. **Reimbursement Class Claims (Lab. Code § 2802)**: Plaintiff alleged that, starting on or about March 4, 2020, and until June 30, 2021 (when Otis reopened its campuses), as a result of COVID-19, Otis required and expected Reimbursement Class Members to work remotely from home, but it did not reimburse Reimbursement CMs for the home office expenses they incurred each month, including home internet and cell phone expenses, in violation of Labor Code § 2802. Although Otis had a Travel and Business Expense Reimbursement Policy applicable to Reimbursement CMs, Plaintiff alleged that it did not apply to the monthly remote work expense they incurred working remotely from home.

58. Plaintiff calculated Defendant's potential liability for unreimbursed business expenses as follows: Plaintiff estimated that Reimbursement CMs worked approximately 3,900 months between March 4, 2020 and June 30, 2021. Plaintiff estimates that Reimbursement CMs (who were full-time employees) incurred \$75 per month in home office expenses. Accordingly, Otis is liable for 3,900 months * \$75 per month = **\$292,500** in unreimbursed business expenses.

² \$457,385/ 665 Adjunct Class Members.

³ \$800,019/ 665 adjunct Class Members.

⁴ \$457,385/ 16,500 pay periods.

⁵ \$800,019/ 16,500 pay periods

⁶ 15 pay periods per year * 5-years * \$27.72 per pay period

1 59. **Class Certification Risk:** Plaintiff applied a 10% discount for class certification based
2 on Otis' contention that individualized issues would predominate including whether Reimbursement
3 CMs incurred expense working remotely and whether such expenses were reimbursed —the answers to
4 all of those questions will vary on a case-by-case; and for the risk presented by Defendant's arbitration
5 agreement (which was a smaller risk factor for this claim because Reimbursement CMs did not sign
6 arbitration agreements and Plaintiff could have added a non-adjunct class representative to bring this
claim on a class-wide basis). This reduced realistic damages to \$263,250.

7 60. **Merits Risk:** As to the merits, Plaintiff applied a further 10% discount based on
8 anticipated arguments that even if expenses were incurred, these were voluntary and/or minimal. Otis
9 also contended that it provided laptops and Voice Over Internet Protocol ("VOIP") software to
10 Reimbursement CMs which reduced its liability (at least as to cell phone expenses). This reduced Otis'
realistic damages to **\$236,925**.

11 61. The 19.19% of the GSA (approximately \$189,981) allocated to Reimbursement Class
12 represents 65% of Defendant's maximum exposure and 80% of its realistic exposure. Approximately
13 \$108,615 will be available for distribution to Reimbursement Class Members *pro rata* based on the
14 number of pay periods worked by them during the Reimbursement Class Period. The average net payment
15 to Reimbursement Class Members is \$155.56⁷ and the average gross is \$271.40.⁸ There are
16 approximately 7,800 pay periods in the Reimbursement Class Period⁹ and value of each pay period is
17 \$24.36 gross¹⁰ and \$13.93 net.¹¹ A Reimbursement CM who worked for the entire Reimbursement Class
18 Period can expect to receive approximately \$434.46.¹² This is, in my experience, a very good result when
considering Defendant's defenses against Plaintiff's reimbursement claim.

19 **PAGA Allocation is Fair and Reasonable**

20 62. There were approximately 5,665 pay periods during the PAGA Period (October 8, 2020
21 through August 3, 2022). Using a penalty of \$100 per pay period (because Defendant never received
22 notice from the Labor Commissioner or the Court so there are arguably no "subsequent" violations)
23 Defendant's maximum exposure in PAGA Penalties is \$566,500 (assuming the Court would not allow
"stacking" of PAGA penalties for each separate Labor Code violations).

24
25 ⁷ \$108,615/ 700 Reimbursement CMs

26 ⁸ \$189,981/ 700 Reimbursement CMs

27 ⁹ 2 pay periods per month * 3,900 months

28 ¹⁰ \$189,981/ 7,800 pay period

¹¹ \$108,615 / 7,800 pay periods

¹² 2 pay periods per month * 16-month liability period * \$10.44 per pay period

63. There were approximately 2,184 months during the Reimbursement PAGA Period (October 8, 2020 through August 3, 2022) during which Reimbursement Class Members worked remotely. Using a penalty of \$100 per month (because remote work expenses are typically reimbursed once per month), Defendant's maximum exposure in PAGA Penalties to the Reimbursement Class is \$218,400. Thus, Otis' maximum liability for PAGA Penalties is **\$784,900**.

64. The \$25,000 allocated to PAGA penalties represents 3% of Defendant's PAGA exposure and is comparable to PAGA allocations in similar cases that received final approval from California Superior Courts including *Parson v. La Sierra University*, Case No. CVRI2000104 (Riverside County Superior Court) (May 19, 2022) (finally approving a PAGA allocation of \$15,000, representing 2% of the maximum \$737,000 in PAGA penalties); *Solis et al. v Concordia University Irvine*, Case No. 30-2019-01114998-CU-OE-CXC (Orange County Superior Court)(February 3, 2022) (finally approving a PAGA allocation of \$20,000, representing 2% of the maximum \$972,700 in PAGA penalties); *Sweetland-Gil v University of the Pacific*, Case No. STK-CV-UOE-2019-0014682 (San Joaquin County Superior Court) (March 4, 2022) (finally approving a PAGA allocation of \$30,000, representing 1.6% of the maximum \$1,517,700 in PAGA penalties); *Pillow et al. v Pepperdine University*, Case No. 19STCV33162 (Los Angeles Superior Court)(July 28, 2021)(finally approving a PAGA allocation of \$15,000, representing 1% of the maximum \$1,619,200 in PAGA penalties); *Moore et al v Notre Dame De Namur University*, Case No. 19-CIV-04765 (San Mateo County Superior Court) (July 1, 2021)(finally approving a PAGA allocation in the amount of \$12,000, representing 1.9% of the maximum \$631,300 in PAGA penalties); *Mooiman et al. v Saint Mary's College of California*, Case No. C19-02092 (Contra Costa County Superior Court) (June 10, 2021)(finally approving a \$30,000 PAGA allocation representing 1% of the maximum \$649,200 in PAGA penalties, and explaining that "the record 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"); *Morse v Fresno Pacific University*, Case No. 19-CV-04350 (Merced County Superior Court) (April 6, 2021) (finally approving a \$30,000 PAGA allocation, representing 2% of maximum \$1,194,800 in PAGA penalties); and *Harris-Foster v University of Phoenix*, , Case No. RG19019028 (Alameda Superior Court)(March 17, 2021)(finally approving a PAGA allocation of \$5,000, representing 1.5% of the maximum \$3,173,200 in PAGA penalties).

65. This allocation is fair and reasonable for several reasons. First, the overall settlement resulted in significant relief for each Class which is what courts look at when assessing amount attributed to PAGA penalties. In *Gola v. University of San Francisco*, No. CGC-18-565018 (San Francisco Cnty.

1 Super. Ct. March 3, 2021) a recent case brought by my firm on behalf of adjunct instructors, the court
2 found that substantial monetary relief in form of statutory penalties under § 226(e) (and fees and costs
3 plaintiff would seek) acted as a sufficient punishment and deterrent, and awarded only 15% of the full
4 PAGA penalties—and this was a case where defendant did not have a good faith defense.

5 66. Second, the Court could reduce any award of PAGA penalties as “unjust, arbitrary and
6 oppressive, or confiscatory” under Labor Code § 2699(e)(2) on the theory that Otis operated in good faith
7 and reasonably believed it was in compliance with the Labor Code. Moreover, Otis argued that it was
8 highly unlikely that the Court would award \$218,000 in PAGA penalties to the Reimbursement Class
9 where damages sustained by that Class were only 25% more than that amount (i.e., approximately
10 \$292,500).

11 67. Third, in order to recover any PAGA penalties, Plaintiff would be required at trial to prove
12 that each Aggrieved Employee suffered a violation for each pay period the employee worked, which
13 would be difficult in light of Defendant’s contentions discussed above.

14 68. Fourth, although class certification requirements do not apply to PAGA claims, such
15 claims can be stricken if they are found to be “unmanageable,” and because only Class Members who
16 actually incurred unpaid wages or unreimbursed expenses during a particular pay period could recover
17 PAGA penalties for those violations, Defendant could have disputed that there is a manageable way to
18 determine who was entitled to such penalties.

19 **VI. THE SETTLEMENT AVOIDS RISKS AND EXPENSE OF FURTHER LITIGATION**

20 69. If parties continued to litigate this case, the trial court would rule on the enforceability of
21 the arbitration agreement and whether the adjunct class claims could proceed in arbitration. Then,
22 assuming Plaintiff won, the case would proceed to class certification as to the various claims. Whichever
23 claims cleared that hurdle would potentially face pre-trial dispositive motions, and whichever claims
24 cleared that hurdle would face trial. Regardless of the outcome at trial, the losing party would likely
25 appeal, given that some of the central legal issues in this case have not been conclusively addressed by
26 an appellate court. This process would take years to resolve. Plaintiffs’ Counsel has been litigating a
27 case on behalf of University of San Francisco’s adjunct instructors for nearly three years, which is still
28 ongoing, and an appeal is pending.

70. The settlement avoids these risks associated with the complexities of this litigation, and
especially in view of the arbitration clause at issue in this case. Instead, this settlement provides an early
resolution of a dispute, and Class Members will obtain a recovery in the relatively near future if the

1 settlement is finally approved. Based on the foregoing, I consider this settlement to be fair, reasonable
2 and adequate, and an overall excellent result.

3 **VII. ATTORNEYS' FEES AND COSTS**

4 71. The Settlement Agreement provides that Defendant will not oppose a request for
5 attorney's fees of up to 35% of the Gross Settlement (i.e., \$346,500). This is fair, reasonable and adequate
6 to compensate Class Counsel for the substantial work they have already done to prosecute this Action,
7 the risk they assumed to agree to take the case in the first place, the great expense spared to the Class by
8 Class Counsel having achieved a successful resolution, and the continued time and expense that Class
9 Counsel will incur by administering the fair distribution of the settlement fund should this Court grant
10 the settlement's approval.

11 72. Class Counsel agreed to represent Plaintiff on behalf of the putative Classes on a
12 contingency basis, and further agreed to advance all litigation costs. Our significant financial outlays
13 would have been entirely lost if the case were not won, and the amount of Class Counsel's time that
14 would have remained uncompensated in that event would have been substantial. Class Counsel also took
15 on this case despite the known risks associated with Plaintiff's class allegations as described above and
16 the unpredictable risks that are common to most complex employment class actions that develop only
17 over the course of the litigation. Class Counsel was able to obtain a very favorable settlement for the
18 Classes.

19 73. Our firm has spent significant time litigating this case, including interviewing Plaintiff
20 and putative Class Members, reviewing documents provided by Plaintiff prior to and after case initiation
21 and information obtained by our firm through our own research, filing a detailed complaint, engaging in
22 extensive discovery, analyzing voluminous data produced by Otis, conducting a survey, drafting a
23 detailed mediation brief, attending a full-day mediation, negotiating the settlement, drafting the
24 preliminary approval papers; and planning and strategizing throughout the case. Further, we will spend
25 many additional hours obtaining preliminary approval; overseeing the notice process; answering
26 questions from Class Members; preparing the final approval papers; attending the final approval hearing;
27 and overseeing the distribution of the settlement funds.

28 74. The Settlement Agreement's award of litigation costs of up to \$25,000 is intended for
commonly reimbursed out-of-pocket cost incurred by my firm, including filing and process-serving fees,
expenses related to court appearances, copying, legal and other research charges, and the professional
fees paid to Lisa Klerman for a full-day mediation session, which was essential in reaching the
Settlement.

75. If the Court grants Preliminary Approval and authorizes the dissemination of notice of the settlement to the class, Class Counsel anticipates filing a Motion for Attorneys' Fees and Costs and Enhancement Award for Class Representative that will be scheduled to be heard concurrently with the Motion for Final Approval. If the Settlement is given preliminary approval by the Court, our firm will need to expend additional hours and will incur additional costs preparing and filing the motion for final approval and the motion for attorneys' fees and reimbursement of litigation costs, coordinating with the settlement administrator, and answering calls and questions from Class Members.

VIII. PLAINTIFF'S SERVICE AWARD

76. The request for an Enhancement Award of \$7,500 to the Plaintiff is reasonable and fair. The Enhancement Award is intended to compensate Plaintiff for the critical role she played in this case and the substantial time, effort, and risks she undertook in helping secure the result obtained on behalf of the Settlement Classes. In agreeing to serve as class representative, Plaintiff formally agreed to accept the responsibility of representing the interests of all Class Members. Plaintiff collected and provided documents and diligently assisted Class Counsel in the investigation for the case and in seeking informal discovery. She assisted in preparing and evaluating the case for mediation and provided Class Counsel with guidance to evaluate and approve the proposed settlement on behalf of the Settlement Classes. Plaintiff's participation and assistance was critical to the success of this litigation and the enforcement of Labor Code protections. Without Plaintiff's willingness and commitment to come forward and serve as Class Representative in commencing this lawsuit, this litigation, which enforces the protections of the California Labor Code, would not have been brought. Significantly, the named Plaintiff is granting Defendant a general release of all claims, which is far broader than the release being given by the members of the Classes on whose behalf settlement has been reached. Finally, none of the Plaintiff's claims are antagonistic to the interests of the class. Defendant does not oppose this request.

IX. SETTLEMENT ADMINISTRATOR

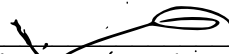
77. The parties have selected Simpluris, Inc. to administer this settlement. Simpluris has extensive experience in the settlement administration of wage and hour class actions like this one, having administered thousands of class action settlements, and my firm has retained them for the settlement administration of many other wage and hour cases.

///

X. CY PRES BENEFICIARY

78. Subject to Court approval, pursuant to the Settlement and in accordance with California Civil Code § 384(b), any uncashed settlement check amounts will be distributed to Bet Tzedek, as the *cy pres* beneficiary. Bet Tzedek is a non-profit organization that provides free legal services to people living in poverty and for communities victimized by discrimination and civil rights abuses. I certify that I do not have any connection to or relationship with Bet Tzedek that could reasonably create the appearance of impropriety as between the selection of the recipient of the money or thing of value and the interests of the class, nor does my law firm.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct. Executed on August 26, 2022.



Julian Hammond

EXHIBIT 1

Approved California Wage and Hour Cases

- ***Parson v. La Sierra University***, Case No. CVRI2000104 (Riverside County Superior Court) (May 19, 2022) (certifying HammondLaw as class counsel for \$578,220 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, 203, claims on behalf of 381 adjunct instructors and Labor Code § 2802 claims 739 other employees);
- ***Chindamo v Chapman University***, Case No. 30-2020-01147814-CU-OE-CXC (Orange County Superior Court) (April 15, 2022) (certifying HammondLaw as co-class counsel for \$1,150,00 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, 203, claims on behalf of 1,374 adjunct instructors and Labor Code § 2802 claims on behalf of 4,120 other employees);
- ***Sweetland-Gil v University of the Pacific***, Case No. STK-CV-UOE-2019-0014682 (San Joaquin County Superior Court) (March 4, 2022) (certifying HammondLaw as class counsel for \$1,800,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of 1,100 adjunct instructors);
- ***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 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 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 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 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 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

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HammondLaw as class counsel for \$711,500 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of 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 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 397 adjunct instructors);
- ***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 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 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 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 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 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 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 958 adjunct instructors);
- ***Pereltsvaig v. Cartus Corporation***, Case No. 19CV348335 (Santa Clara County Superior Court, January 13, 2021) (certifying HammondLaw as class

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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 Labor Code §§ 1194, 226, 226.7, 510, 512, and 2802 claims on behalf of 309 amazon 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 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 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 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 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 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 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 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

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counsel for \$340,000 settlement of Labor Code §§ 1194, 226, 226.2, 226.7, 226, 201-203, and 2699 claims on behalf of 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 506 instructors);
- **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 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 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

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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 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);

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- ***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);
- ***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);

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- ***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);
- ***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

HAMMONDLAW

A P R O F E S S I O N A L C O R P O R A T I O N

FACSIMILE: 310-295-2385

11780 W Sample Rd., Suite 103
Coral Springs, FL 33065

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October 8, 2021

VIA LWDA WEBSITE

Department of Industrial Relations
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

VIA CERTIFIED MAIL

Charles Hirschhorn
President, Otis College of Art and Design
9045 Lincoln Blvd.
Los Angeles, CA 90045

Stuart Rudnick
Otis College of Art and Design
Agent for Service of Process
Musick, Peeler & Garrett
1 Wilshire Blvd.
Los Angeles, CA 90017

**Re: Private Attorneys General Act Notice of Claims Pursuant to California
Labor Code § 2699**

Dear President Hirschhorn,

This letter is to provide notice of claims for penalties under the California Labor Code Private Attorneys General Act of 2004, as amended, Cal. Labor Code § 2698 *et seq.* (“PAGA”).

We represent Alvalyn Lundgren (“Plaintiff”) in connection with her claims against Otis College of Art and Design (“Otis” or “Defendant”) on behalf of herself and all other part-time lecturers employed by Otis in California (“Adjunct Aggrieved Employees”) from one year and six months prior to the postmark date of this Notice through to trial of this matter (“PAGA Period”) for the following Labor Code violations:

- (a) failure to pay wages for hours worked prior to the first day of classes in violation of Labor Code §§ 1194, 1194.2, and Wage Order No. 4-2001, § 4;
- (b) failure to pay separately and hourly for rest breaks and/or failure to permit and authorize off-duty rest breaks, and pay missed rest break premiums in violation of Labor Code §§ 226.2, 226.7, and IWC Wage Order No. 4, § 12;

- (c) failure to issue accurate itemized wage statements for all pay periods and failure to issue accurate itemized wage statements that included all hours worked and all applicable hourly rates in violation of Labor Code § 226(a), and piece-rate information in violation of Labor Code § 226.2(a);
- (d) failure to pay compensation due upon discharge from employment in violation of Labor Code §§ 201-203;
- (e) failure to maintain accurate payroll records, under Labor Code §§ 1174(d) and 1174.5; and
- (f) failure to reimburse business related expenses in violation of Labor Code § 2802.

Plaintiff also asserts claims on behalf of herself and all other individuals employed by Otis in California (“Aggrieved Employees”) during the PAGA Period for the following violation:

- (g) failure to reimburse business related expenses in violation of Labor Code § 2802.

The PAGA Period goes back one year and six months for the following reasons. On May 29, 2020, in response to COVID-19, the Judicial Council of California adopted Emergency Rule 9, under which the statutes of limitations “for civil causes of action that exceed 180 days [were] tolled from April 6, 2020, until October 1, 2020.” As such, for any claims that were accruing throughout this tolling period, the statute of limitations is extended by 178 days. Thus, the PAGA Period is one year and 178 days or approximately six months through to trial in this matter.

Plaintiff provides the following factual basis supporting her claims:

I. Adjunct Aggrieved Employees Were and Are Piece Rate Workers

Throughout the PAGA Period, Adjunct Aggrieved Employees have been piece rate workers because Otis pays them a set amount of money per course. The more courses Adjunct Aggrieved Employees teach, the more they are paid. This type of compensation is a form of piece-rate compensation. The DLSE defines “piece-rate” broadly, as “[w]ork paid for according to the number of units turned out. Consequently, a piece rate must be based upon an ascertainable figure paid for completing a particular task or making a particular piece of goods . . .”¹ True to the piece-rate definition in the DLSE Manual, a 2014 report from the U.S. House of Representatives Committee on Education and the Workforce Democratic Staff, discussing poor working conditions of adjunct instructors, characterizes adjunct instructors’ pay based on the number of courses taught as a piece-rate. The report states: “Generally, adjunct work is piece work. These contingent faculty usually are paid a piece rate, a fixed amount of compensation for

¹ DLSE Enforcement and Interpretation Manual, § 2.5.1. Noting the diversity of the nature of piece rate plans, the DLSE provides a non-exclusive list of examples, including automobile mechanics paid on a “book rate,” nurses paid on the basis of the number of procedures performed, carpet layer paid based on the number of yards of carpet laid; a technician paid by the number of telephones installed, and a factory worker paid by the widget completed, and carpenter paid by the linear foot of on framing job. DLSE Manual § 2.5.2

each unit produced, regardless of how much time it takes to produce. In this case, the unit of production is a college course.”² This is *exactly* how Otis paid Adjunct Aggrieved Employees – an ascertainable/fixed amount per course.

Plaintiff and other Adjunct Aggrieved Employees’ compensation does not qualify as a salary because the term connotes a “predetermined amount that is not subject to reduction based upon the quantity or quality of work.” *Negri v. Koning Assocs.*, 216 Cal. App. 4th 392, 399 (2013) (citing *Kettenring v. Los Angeles Unified School Dist.*, 167 Cal. App. 4th 507, 513-14 (2008)). Here, Otis retains the right to cancel teaching contracts when, for example, “enrollment is insufficient to offer a given class, or . . . a given class offering is not feasible for instructional, education, or scheduling reasons.” These policies/practices mean that Aggrieved Employees’ pay is subject to reduction based on quantity of work performed and, therefore, cannot be considered a salary. See *Lucero v. Regents of Univ. of Cal.*, 1993 U.S. Dist. LEXIS 12208, *17 (N.D. Cal. 1993) (“an exempt employee’s salary must ‘not [be] subject to reduction because of variations in the quality or quantity of the work performed.’” (citation omitted)); 29 CFR § 541.602 (“(a) General rule. An employee will be considered to be paid on a “salary basis” within the meaning of this part if the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed.” (emphasis added)).

Accordingly, Plaintiff and Adjunct Aggrieved Employees were and are subject to the requirements of Labor Code § 226.2 that governs piece-rate worker pay in California.

II. Adjunct Aggrieved Employees Were Non-Exempt

Plaintiff was employed by Otis as a part-time lecturer until approximately August 2021. Plaintiff and other Adjunct Aggrieved Employees were non-exempt under California law. Wage Order No. 4-2001, § 1(A) provides certain exemptions including executive, administrative or professional exemptions. Under Wage Order No. 4-2001, § 1(A)(3)(d) the professional exemption – which is the only exemption potentially applicable to Adjunct Aggrieved Employees – only applied, prior to September 8, 2020, if the employees earned “a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment” which is defined in Labor Code § 515(c) as 40 hours per week (“minimum earnings requirement”). Plaintiff and Adjunct Aggrieved Employees earned less than the minimum earnings requirement during most, if not all, of the relevant pay periods and were therefore entitled to certain protections under the Labor Code, including to be paid for all hours worked, to be authorized and permitted to take off-duty rest periods and/or to be paid for time spent on rest periods separate and apart from the piece, and to be provided with accurate itemized wage statements pursuant to Labor Code §§ 1194, 226.2, 226.7, 226(a), and Wage Order No. 4-2001, §§ 4 and 12.

² “The Just-In-Time Professor” is available here: <https://edlabor.house.gov/download/the-just-in-time-professor>

Labor Code § 515.7, effective September 9, 2020, modified the requirements of the professional exemption. It provides in relevant part, as follows:

“(a) If an employee is employed to provide instruction for a course or laboratory at an independent institution of higher education, as defined in subdivision (b) of Section 66010 of the Education Code, the employee shall be classified as employed in a professional capacity under Wage Order No. 4-2001 of the Industrial Welfare Commission, or under Wage Order No. 5-2001 of the Industrial Welfare Commission, and shall be exempt from paragraphs (2), (3), and (9) of subdivision (a) of Section 226, and Sections 510 and 512, when *all of the following* apply:

(1) The employee is employed in a professional capacity....

(2) The employee is paid *on a salary basis*, as defined by Section 541.602 of Title 29 of the Code of Federal Regulations, and receives one of the following minimum compensations:

(A) A monthly salary equivalent to no less than two times the state minimum wage for employment in which the employee is employed for at least 40 hours per week.

(B) When employed per course or laboratory, a salary for a course or laboratory that is calculated on the basis of classroom hours as set forth in subdivision (b).

...

(b) The minimum salary required by subparagraph (B) of paragraph (2) of subdivision (a) shall be calculated using classroom hours as follows:

(1) The minimum payment that is calculated using classroom hours shall encompass payment for all classroom or laboratory time, preparation, grading, office hours, and other course- or laboratory-related work for that course or laboratory and no separate payment shall be required. The following minimum rates shall be used in this calculation:

(A) For each classroom hour in 2020: one hundred seventeen dollars (\$117).

(B) For each classroom hour in 2021: one hundred twenty-six dollars (\$126).

(C) For each classroom hour in 2022: one hundred thirty-five dollars (\$135).

...

(4) For purpose of this section, ‘classroom hour’ means the time spent in the primary forum of the course or laboratory, regardless of whether the forum is in-person or virtual.”

(emphasis supplied).

As discussed above, Plaintiff and other Adjunct Aggrieved Employees' compensation cannot be considered a salary. Thus, § 515.7 does not apply to make them exempt. Moreover, Plaintiff and other Adjunct Aggrieved Employees have, since September 9, 2020, continued to earn less than the minimum earnings requirements under either § 515.7(a)(2)(A) or (B) and, thus, on that alternative ground, remain non-exempt. For example, Plaintiff's Spring 2021 contracts provided for total compensation of \$1,518.00 and "Course Hours" of 30, which is equivalent of \$50.60 per classroom hour, and is well below the \$126 per classroom hour required pursuant to section 515.7 of the Labor Code.

III. Plaintiff's Unpaid Wages Claim – Violation of Labor Code § 1194 and IWC Wage Order No. 4, § 4

Defendant is a private non-profit college that employs Plaintiff and other Adjunct Aggrieved Employees as part-time faculty members to teach courses on a term-by-term basis ("Contract Periods"). For each academic session, Defendant issues its uniform Employee Contracts that set out the terms of Adjunct Aggrieved Employees' employment. The Employee Contracts include the courses the instructors are assigned to teach; the start and end date of the classes; the total compensation; and the applicable pay dates. Often, Adjunct Aggrieved Employees receive no pay corresponding to work completed prior to the start of classes (i.e. the pay period dates of their first wage statement does not cover the period immediately prior to the start of classes). As non-exempt workers, Adjunct Aggrieved Employees were and are entitled to be paid at least at the minimum wage for all hours worked. Otis's failure to pay them for work performed prior to the start of classes violates Labor Code § 1194 and IWC Wage Order No. 4, § 4.

As a result of Defendant's violation of Labor Code § 1194, Plaintiff and Aggrieved Employees are entitled to one hundred dollars (\$100) for each initial violation and two hundred dollars (\$200) for each subsequent violation, pursuant to Labor Code § 2699(f)(2).

IV. Plaintiff's Rest Break Claim – Violation of Labor Code §§ 226.2, 226.7, and IWC Wage Order No. 4, § 12

Adjunct Aggrieved Employees routinely worked at least 3.5 hours or more on any given day and Otis knew or should have known that they did so. Otis was therefore required to permit and authorize paid rest breaks and, under Labor Code § 226.2, to pay Adjunct Aggrieved Employees at their average hourly rate for their time spent on rest breaks separately and apart from the piece. Otis failed to pay separately and hourly for rest breaks, however, thereby triggering an obligation to make premium payments to Adjunct Aggrieved Employees under Labor Code § 226.7 and Wage Order No. 4-2001.

Otis also maintained policies and/or practices that impeded Adjunct Aggrieved Employees' ability to take off-duty 10-minute rest periods. These policies and/or practices included, but were not limited to, requiring Adjunct Aggrieved Employees to be available to students before, during, and after class. Thus, Otis failed to authorize and permit compliant rest

breaks in accordance with Wage Order No. 4-2001, § 12(A) thereby triggering an obligation to make premium payments to Plaintiff and Adjunct Aggrieved Employees under Labor Code § 226.7 and Wage Order No. 4-2001, § 12(B).

Pursuant to Labor Code § 2699(f)(2), Plaintiff and Adjunct Aggrieved Employees are entitled to one hundred dollars (\$100) for each initial violation and two hundred dollars (\$200) for each subsequent violation of Labor Code §§ 226.2, 226.7.

V. Plaintiff's Wage Statement Claim – Violation of Labor Code §§ 226(a)(2), (a)(3), (a)(9), 226.2(a)

During the PAGA Period, Otis was required, but failed, to issue itemized wage statements that contained accurate numbers of actual hours worked and all applicable hourly rates during each pay period in violation of Labor Code § 226(a)(2) and (a)(9).

Additionally, because Adjunct Aggrieved Employees were piece-rate workers, pursuant to Labor Code § 226(a)(3) and § 226.2(a)(2), Otis was required to furnish them with wage statements that also included accurate entries for (1) the number of piece-rate units earned and any applicable piece rate, (2) the total hours of compensable rest and recovery periods, (3) the rate of compensation for rest and recovery periods, (4) gross wages paid for compensable rest and recovery periods, (5) the total hours of nonproductive time, (6) the rate of compensation for nonproductive time, and (7) gross wages paid for nonproductive time. However, Otis failed to list the above required information, in part because it failed to pay Adjunct Aggrieved Employees separately and hourly for rest break time and for non-productive time and failed to track Adjunct Aggrieved Employees' non-productive time.

Moreover, on many occasions Otis failed to issue wage statements that covered the work that Adjunct Aggrieved Employees performed before classes started.

As a result of Defendant's violation of Labor Code §§ 226(a) and 226.2(a)(2), pursuant to Labor Code § 2699(f)(2), Plaintiff and Adjunct Aggrieved Employees are entitled to one hundred dollars (\$100) for each initial violation and two hundred dollars (\$200) for each subsequent violation.

VI. Failure to Pay All Wages Due at Discharge – Violation of Labor Code §§ 201-203

Labor Code § 201(a) provides that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code § 203(a), provides that "[i]f an employer willfully fails to pay... in accordance with [Section 201], any wages of an employee who is discharged ... shall continue as a penalty from the due date thereof at the same rate until paid ... but the wages shall not continue for more than 30 days." The term "willful" in section 203 "merely means that the employer intentionally failed or refused to perform an act *which was required to be done*." See *Barnhill v. Roberts Saunders & Co.*, 125 Cal. App. 3d 1, 7-8 (1981). "[T]he employer's refusal to pay need not be based on a

deliberate evil purpose to defraud workmen of wages which the employer knows to be due.” *Id.* at 7.

Because Adjunct Aggrieved Employees were not paid separately and hourly for rest breaks and were not paid for all work performed before classes began, they were not paid all wages due at the time of discharge. As a result, Adjunct Aggrieved Employees did not receive all wages due upon termination; nor did they receive those wages due within 30 days of the separation of their employee from Defendant.

In addition, Otis also frequently failed to pay the final installment of the set amount paid for a course until several days after the end-date of the contract – *i.e.*, after the time of “discharge.” Despite the Adjunct Aggrieved Employee being discharged at the conclusion of the course, Otis generally did not pay final wages until the next semi-monthly pay date or the date after that.

Pursuant to Labor Code § 2699(f)(2), Plaintiff and Aggrieved Employees are entitled to one hundred dollars (\$100) for each initial violation, and two hundred dollars (\$200) for each subsequent violation.

VII. Failure to Maintain Payroll Records – Violation of Labor Code §§ 1174(d) and 1174.5

Under Labor Code §§ 1174(d) and 1174.5, Otis was required to maintain accurate payroll records for Plaintiff and Adjunct Aggrieved Employees. Otis has failed to maintain records of, among other things, the hours worked and applicable rates of pay. Labor Code § 1174.5 provides a civil penalty of \$500 for violations of section 1174(d). Plaintiff seeks to recover such penalties with respect to Plaintiff and the Adjunct Aggrieved Employees.

VIII. Plaintiff’s Unreimbursed Expenses Claim on Behalf of Adjunct Aggrieved Employees – Violation of Labor Code § 2802

Pursuant to Labor Code § 2802 an employer is required to reimburse its employees “for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the direction of the employer, . . .”

Throughout the PAGA period, Otis did not maintain a policy of reimbursing Adjunct Aggrieved Employees for their business expenses. Adjunct Aggrieved Employees incurred unreimbursed expenses in carrying out their job duties for Otis when they taught online courses from home. These expenses include but are not limited to home office expenses including internet cost, home or mobile telephone expenses, ink toner/cartridges and paper and other expenses associated with working from home. Otis knew or should have known that Adjunct Aggrieved Employees incurred these expenses in carrying out their job duties for Otis because Otis required and/or expected Adjunct Aggrieved Employees to teach online courses from home.

Pursuant to Labor Code § 2699(f)(2), Plaintiff and Adjunct Aggrieved Employees are entitled to one hundred dollars (\$100) for each initial violation and two hundred dollars (\$200) for each subsequent violation of Labor Code § 2802.

IX. Plaintiff's Unreimbursed Expenses Claim on Behalf of Aggrieved Employees – Violation of Labor Code § 2802

As a result of the COVID-19 pandemic and the state of emergency declared in California on March 4, 2020 due to the pandemic, all non-essential workers were required to work from home. As a result, Aggrieved Employees incurred home office expenses including but not limited to home internet cost, home or mobile telephone expenses, ink toner/cartridges and paper, and other expenses associated with working from home, in order to carry out their job duties for Otis. However, Otis did not reimburse them for these expenses fully or at all in violation of § 2802 of the California Labor Code. Otis knew or should have known that Aggrieved Employees incurred these expenses in carrying out their job duties for Otis because they were required to work from home.

Pursuant to Labor Code § 2699(f)(2), Plaintiff and Aggrieved Employees are entitled to one hundred dollars (\$100) for each initial violation of Labor Code § 2802 and two hundred dollars (\$200) for each subsequent violation of § 2802.

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency of our intent to pursue a lawsuit against Otis that will include a claim for civil penalties under the PAGA to be brought by the Plaintiff, individually and on behalf of all other Adjunct Aggrieved Employees and Aggrieved Employees, based on the Labor Code violations alleged above.

Yours truly,

Julian Hammond