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10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

11 **COUNTY OF VENTURA**

12  
13 **MICHAEL UGUCCIONI**, individually and on  
behalf of all others similarly situated,

14 Plaintiff,

15 vs.

16 **CALIFORNIA LUTHERAN UNIVERSITY**, a  
17 California Non-Profit Corporation,

18 Defendant.

CASE NO. 56-2021-00560166-CU-OE-VTA

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

Date: October 14, 2022

Time: 8:30 a.m.

Dept.: 40

Reservation # 2670143

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## I. INTRODUCTION

Plaintiff Michael Uguccioni seeks preliminary approval of a non-reversionary \$650,000 settlement of his class action expense reimbursement claims against California Lutheran University (“Defendant” or “CLU”) on behalf of approximately 636 employees who worked remotely (“Class Members” or “CMs”) from June 1, 2019 through May 31, 2022 (“Class Period”). The Settlement Agreement, and Amendment thereto, (collectively “SA”) are attached as **Exhibit 1** to the Proposed Order, filed herewith. This settlement was reached after a full-day mediation with a well-respected mediator and was preceded by the production of extensive informal discovery and class data. The Gross Settlement represents 68% of Defendant’s maximum exposure (excluding PAGA) which is an outstanding result in light of the many risks posed by continued litigation, including Defendant’s affirmative defense that Plaintiff’s class claims are barred by an arbitration agreement. If approved, the Settlement will provide CMs with an average gross recovery of \$1,022.01 and net recovery of \$567.35, and a Class Member who worked for the entire Class Period can receive \$1,558.01. Declaration of Julian Hammond In Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, filed herewith, ¶ 24.

The Settlement avoids all these risks associated with further litigation, and CMs will obtain a substantial recovery now without the risks and lengthy delays that further litigation would entail. As shown below, the terms of the Settlement are fair and reasonable and satisfy the criteria for judicial approval. Accordingly, the Court should grant preliminary approval, approve the proposed Notice, and set a date for final approval.

## II. OVERVIEW OF THE SETTLEMENT

The Settlement resolves all claims of Plaintiff and the proposed Class that were alleged or could have been alleged based on the facts in the Complaint. The key Settlement terms are:

1. Gross Settlement Amount (“GSA”) – CLU will pay a non-reversionary sum of \$650,000. SA § 1.11.

2. Class Definition and Class Period – The term “Class Members” is defined as “all employees of Defendant in California during the Class Period who were required to work remotely.” SA § 1.5. The Class Period is from June 1, 2019 through May 31, 2022. SA § 1.4.

3. Attorneys’ Fees, Costs, and Named Plaintiff’s Service Award – Class Counsel will seek attorneys’ fees of up to \$216,666.67 (one-third of the GSA) and up \$25,000 to reimburse their out-of-pocket litigation costs. SA § 5; Hammond Decl. ¶ 47. Class Counsel will seek a Service Award of \$7,500 for Plaintiff. SA § 6.

1           4.     PAGA Penalties – The Settlement allocates \$25,000 to the PAGA claim. SA §§ 1.14;  
2     7. The LWDA will be paid 75% of that amount (\$18,750). *Id.* The remaining \$6,250 will be paid  
3     on a *per capita* basis to all Class Members who worked during the PAGA Period, which is defined  
4     as May 21, 2020 through May 31, 2022. SA § 1.15. Each CM who worked during the PAGA Period  
5     will receive a share of the PAGA Penalties even if he or she opts out of the class settlement. *Id.*; SA  
6     §§ 9.1, 9.2.

7           5.     Settlement Administration Costs will not exceed \$15,000. SA § 8. The Parties  
8     selected CPT Group, Inc. (“CPT”) as Administrator. SA § 1.22.

9           6.     Net Settlement Amount (“NSA”) will total approximately \$360,833.33. Hammond  
10    Decl. ¶ 24, fn. 1. From this amount, each CM will receive payment based on the number of pay  
11    periods worked during the Class Period. SA § 9.1. In determining the number of pay periods worked  
12    by a Class Member, those Class Members who were paid once a month will be credited with two  
13    pay periods per monthly payment (i.e., have a 2x multiplier applied to their monthly pay periods)  
14    and Class Members who were paid bi-weekly will be credited with one pay period per payment.  
15    Amended SA, § 9.1.

16           7.     Class Notice – Within 20 calendar days of preliminary approval, Defendant will  
17    provide CPT with (a) the names, employment identification number, last known addresses, last  
18    known telephone numbers, and Social Security numbers of each Class Member; and (b) the number  
19    of pay period worked by each Class Member during the Class Period. SA § 11.1.1. Within 30 days  
20    of preliminary approval, after updating the addresses, CPT will mail each CM a Notice substantially  
21    in the form attached to the Settlement Agreement as **Exhibit A**. SA § 11.1.3. For all returned  
22    Notices, CPT will use skip tracing to update addresses and initiate a second mailing. SA § 11.1.4.

23           8.     Automatic Participation – The Settlement is non-reversionary, and each CM will  
24    automatically receive his or her share of the NSA, unless he or she opts out. SA §§ 1.23, 4, 9.2.1.  
25    PAGA Members will receive their share of PAGA Penalties even if they opt out. *Id.* § 9.2.1.

26           9.     Opting Out or Objecting – CMs who wish to opt out of the Settlement must send a  
27    written Request for Exclusion to CPT requesting to opt out within 45 calendar days of the date the  
28    Notices are mailed out. SA §§ 1.19, 12. Any CM who properly requests to opt out will not be  
29    entitled to receive any payment under the Settlement and will not be bound by the Settlement, except  
30    that they will still receive their share of PAGA Penalties and be bound by the release of PAGA  
31    claims. SA §§ 12.2, 9.2.1. Alternatively, a CM may object to the Settlement by sending CPT a  
32    written statement objecting to the Settlement. SA § 13.

33           10.    Tax Consequences of Settlement Payments – For tax purposes, Settlement payments

1 will be treated as non-wage income and reported on an IRS Form 1099 because they reflect  
2 reimbursement for business expenses, interest, and penalties. SA § 9.2.2. PAGA payments made to  
3 Class members who opt out of the Settlement will be allocated as penalties and reported on an IRS  
4 Form 1099. SA § 9.2.3.

5 11. Uncashed Checks – Settlement checks not cashed within 90 days of the date of  
6 mailing by CPT will be voided and funds will be tendered to Kingsmen Shakespeare Company as *cy*  
7 *pres* recipient under Cal. Code of Civ. Proc. § 384. SA § 15.2.

8 12. Scope of Release and Final Judgment – The class release in the SA is limited to “those  
9 claims and causes of action alleged in the Complaint as well as any and all claims and causes of  
10 action that could reasonable have been alleged in the Complaint, and arising during the Class  
11 Period.” SA § 18.1. The named Plaintiff will also give a general release. SA § 18.3.

### 12 **III. OVERVIEW OF THE LITIGATION**

#### 13 **A. Pleadings**

14 Plaintiff filed this action on November 17, 2021, asserting class claims for CLU’s alleged  
15 failure to reimburse its employees for necessary business expenses associated with working remotely  
16 in violation of Labor Code § 2802. Hammond Decl. ¶ 12. On December 22, 2021, Defendants filed  
17 an Answer with a General Denial and seventeen affirmative defenses, including that the “Court lacks  
18 subject matter jurisdiction over Plaintiff’s Complaint because there is a valid and binding arbitration  
19 agreement between the parties that controls this dispute.” *Id.* ¶ 13. Following Defendant’s filing of  
20 its Answer, the Parties agreed to engage in informal discovery and to attend mediation. *Id.* ¶ 14.  
21 Following the mediation and the reaching of settlement, the Parties stipulated to filing of the First  
22 Amended Complaint, which added a PAGA claim to the action and defined the Class Period as June  
23 1, 2019 to May 31, 2022. *Id.*

#### 24 **B. Discovery and Investigation**

25 Prior to mediation, Defendant produced documents containing relevant information including  
26 (a) number of employees who worked remotely between March 15, 2020 and July 15, 2021 (when  
27 CLU reopened its campuses) and dates of termination; (b) number of instructors who taught online /  
28 hybrid courses during the Fall 2019 and Fall 2021 academic terms; (c) communications issued by  
CLU related to the campus shutdowns; and (d) CLU’s reimbursement policy. Hammond Decl. ¶ 15.  
Additionally, Plaintiff’s counsel gathered information from Defendant’s website concerning CLU’s  
response to COVID-19 and CLU’s policies and procedures concerning remote work. *Id.* ¶ 16.  
Plaintiff’s counsel conducted an online survey of CMs with 100% of respondents reporting that they  
incurred home office expenses, yet received no reimbursement from CLU. *Id.*

1                   **C.     Mediation**

2                   On May 24, 2022, the Parties attended a full-day mediation with Louis Marlin, an experienced  
3 mediator. Hammond Decl. ¶ 17. Plaintiff submitted a detailed mediation brief accompanied by 19  
4 exhibits. *Id.* The brief described the facts and law and summarized the informal discovery exchanged  
5 in aid of mediation, and presented a calculation of damages for the underlying unreimbursed expense  
6 claims if the case were to be certified as a class action. *Id.*

7                   At mediation, Defendant denied that it failed to reimburse any business expenses requested  
8 under its existing reimbursement policy, and contended that Plaintiff would be unable to certify his  
9 class claims, given that CMs had different expenses and different work circumstances, and the  
10 expenses that were reasonable for one CM might not have been reasonable for another. *Id.* ¶ 20.  
11 Defendant also contended that Plaintiff would lose on the merits, because not all CMs incurred  
12 certain types of expenses, and a fact-finder might find that Plaintiff's calculation of Defendant's  
13 liability was inflated, given that many CMs were part-time employees. *Id.* ¶ 21. Defendant also could  
14 have contended Plaintiff's class claims were barred by its arbitration agreement which stated in part:

15                   The parties to this Agreement agree to arbitrate any and all disputes, claims, or controversies  
16 ("claims") they may have against each other, including their current and former, agents,  
17 owners, officers, directors, or employees, which arise from the employment relationship  
18 between Employee and Employer or the termination thereof.

19                   Hammond Decl. ¶ 22. Defendant could have contended that the Court would find its arbitration clause  
20 enforceable and that Plaintiff had waived his rights to pursue class claims. *Lamps Plus, Inc. v. Varela*,  
21 587 U.S. \_\_\_, 139 S. Ct. 1407 (2019) (a court may not compel class arbitration unless agreement  
22 expressly provides for it). Hammond Decl. ¶ 23.

23                   To avoid the expense of litigation, and following a full-day mediation, the Parties reached a  
24 settlement to resolve these competing legal theories, which is now presented to the Court for  
25 approval.

26                   **IV.     CERTIFICATION FOR SETTLEMENT PURPOSES IS MERITED**

27                   When a negotiated class action settlement is reached prior to certification, the Court may  
28 approve certification of a provisional settlement class. Cal. Rules of Court, Rule 3.769(d). A class  
is certifiable if (1) it is ascertainable and sufficiently numerous; (2) there is a well-defined  
community of interest; and (3) a class action would be a superior method of adjudication. *See id.* at  
435; *see also Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1021 (2012).

**A.     The Class Is Ascertainable and Sufficiently Numerous**

Whether a class is ascertainable is determined by examining the class definition, the size of

1 the class, and the means available for identifying CMs. *See Reyes v. Bd. of Supervisors*, 196 Cal.  
2 App. 3d 1263, 1271 (1987). CMs are “ascertainable” because they may be readily identified from  
3 CLU’s records. *See Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955, 986 n.15 (2019). The Class is  
sufficiently numerous because it has approximately 636 members. Hammond Decl. ¶ 3.

4 **B. A “Community of Interest” Exists Among CMs**

5 The “community of interest” requirement has three factors: (1) common questions of law or  
6 fact that predominate; (2) class representatives with typical claims; and (3) class representatives who  
7 can adequately represent the class. *Fireside Bank v. Super. Ct.*, 40 Cal. 4th 1069, 1089 (2007).

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

9 The ultimate question of predominance is whether “the issues which may be jointly tried,  
10 when compared with those requiring separate adjudication, are so numerous or substantial that the  
11 maintenance of a class action would be advantageous to the judicial process and to the litigants.”  
12 *Brinker*, 53 Cal. 4th at 1021 (citations omitted). Whether common questions predominate depends  
13 on whether plaintiff’s theory of recovery is “as an analytic matter, likely to prove amenable to class  
14 treatment.” *Id.* (citation omitted). If liability can be determined by common facts, the need to  
individually prove damages does not prevent certification. *Id.* at 1022.

15 Plaintiff contends that common questions of law and fact predominate. CMs performed their  
16 work remotely as a result of the Covid-19 pandemic, and teaching duties were exercised remotely  
17 throughout the Class Period, either because of the COVID campus closure, or because adjuncts were  
18 assigned to teach an online course. Hammond Decl. ¶ 12. Whether CLU’s alleged failure to  
19 reimburse CMs for other remote-work expenses violated Labor Code § 2802 is a common legal  
20 question. Common factual questions include whether CMs performed work duties remotely during  
21 the Class Period, whether CMs taught online courses remotely for Defendant during the Class Period,  
22 and whether CMs reasonably incurred remote work expenses in carrying out their job duties for  
23 Defendant.

24 **2. Plaintiff’s Claims Are Typical**

25 Plaintiff is typical because, like the Class, he was employed as an instructor during the Class  
26 Period and taught remotely without reimbursement for expenses. *Seastrom v. Neways, Inc.*, 149 Cal.  
27 App. 4th 1496, 1502 (2007). He was subject to the same alleged unlawful practice by Defendant as  
28 alleged by the rest of the Class, and he seeks the same relief as the Class.

**3. Plaintiff and His Attorneys Will Adequately Represent the Class**

“Adequacy of representation depends on whether the plaintiff’s attorney is qualified to  
conduct the proposed litigation and the plaintiff’s interests are not antagonistic to the interests of the

1 class.”” *Caro v. Procter & Gamble Co.*, 18 Cal. App. 4th 644, 669 n.21 (1993) (citations omitted).  
2 Class Counsel have extensive class action litigation experience. Hammond Decl. ¶¶ 6-11. Plaintiff’s  
3 Counsel have extensive experience representing instructors in California, and have been appointed  
4 class counsel in at least 20 such cases over the past five years. *Id.* ¶ 10. Plaintiff has undertaken to  
5 represent the Class, his interests are coextensive with the Class’s, and he has no conflict with the  
6 Class. *Id.* ¶ 3.

7 **C. A Class Action Is a Superior Method of Adjudication**

8 Plaintiff’s claims depend on common evidence, including CLU’s alleged unlawful  
9 reimbursement policies, and Plaintiff’s contention that all employees, including instructors, were  
10 required to incur home office expenses to carry out their duties for Defendant. Hammond Decl. ¶ 12.  
11 It would be inefficient to resolve these claims at separate trials. *Id.*; *see also Bufile v. Dollar Fin.*  
*Grp., Inc.*, 162 Cal. App. 4th 1193, 1208 (2008). Thus, a class action is the superior method of  
12 adjudication.

13 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**  
14 **BECAUSE IT IS FAIR, REASONABLE, AND ADEQUATE**

15 **A. The Two-Step Settlement Approval Process**

16 Court approval of a class settlement is a two-step process: first, a preliminary review of the  
17 reasonableness of the settlement, and second, after notice has been distributed to the Class, a final  
18 approval analysis taking into account the Class’s response. *See* Cal. Rule of Court, Rule 3.769; *Dunk*  
*v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800-01 (1996). Courts analyzing whether a settlement  
19 is fair and reasonable (either at the preliminary or final approval step) consider a number of factors:  
20 (1) the strength of Plaintiff’s case balanced against the settlement amount; (2) the risk, expense,  
21 complexity, and likely duration of further litigation and the risk of maintaining class action status  
22 through trial; (3) the extent of discovery completed and stage of the proceedings; (4) the experience  
23 and views of counsel; and (5) the reaction of the Class to the proposed settlement. *Kullar v. Foot*  
*Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128, 130 (2008).

24 A settlement is “presumed to be fair” when (1) it “is reached through arm’s-length  
25 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act  
26 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is  
27 small.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 52 (2008) (citation omitted). The Settlement  
28 meets all of these criteria and the Court should grant preliminary approval.

///

1                                   **1. The Gross Settlement Amount Is Reasonable Compared to the Potential**  
2                                   **Recovery**

3                   A comparison of the recovery achieved by the Settlement to the strength of the Class’s claims  
4 is the most important factor in analyzing the fairness of the Settlement. Kullar, 168 Cal. App. 4th at  
5 130. Here, an examination of the likely recovery demonstrates that the proposed Settlement of  
6 \$650,000 is reasonable.

7                   Plaintiff alleges that Defendant failed to reimburse Class Members for home internet and  
8 other expenses related to working remotely in violation of Labor Code § 2802, yet CLU did not  
9 reimburse the necessary business expenses associated with working from home. Hammond Decl. ¶  
10 12. Plaintiff alleges that even if CMs would have paid for home internet or other costs regardless of  
11 whether they performed work for CLU, CLU was still required to reimburse a “reasonable  
12 percentage” of that cost. *Cochran v. Schwan’s Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1140  
13 (2014) (requiring reimbursement of a “reasonable percentage” of costs of personal cell phone service  
14 when phone is used for work). Plaintiff calculated Defendant’s maximum exposure (including  
15 interest but excluding PAGA) as \$958,640. Id. ¶ 18. The \$650,000 Gross Settlement represents  
16 68% of CLU’s maximum exposure on the Labor Code § 2802, without any discounts taken to reflect  
17 the substantial risks and delays that the Class would face if litigation were to continue, including  
18 Defendant’s affirmative defense that Plaintiff’s class claims were barred by an arbitration agreement,  
19 and Defendant’s contentions that Plaintiff would lose on class certification and on the merits.  
20 Hammond Decl. ¶ 20-23.

21                   The gross share per Class Member is \$1,022.01 and the net is \$567.35. Id. ¶ 24. The gross  
22 value per pay period is \$38.99 and the net value is \$21.64, and a Class Member who worked for the  
23 entire 3-year Class Period will receive \$1,558.08, in addition to his or her per capita share of PAGA  
24 penalties. Id. The Settlement provides an efficient resolution of this dispute, and CMs will obtain a  
25 substantial recovery now without the lengthy risks and year of delay posed by further litigation. Id.  
26 ¶ 25.

27                                   **2. The PAGA Allocation is Fair and Adequate:**

28                   Plaintiff calculates Defendant’s maximum liability for PAGA Penalties, using \$100  
per pay period (because Defendant never received notice from the Labor Commissioner or the Court  
so there are arguably no “subsequent” violations) as \$876,500. *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). Hammond Decl. ¶ 26.

1 The \$25,000 allocated to PAGA penalties represents approximately 3% of Defendant's  
2 exposure to PAGA penalties, which is comparable to PAGA allocations in similar cases that received  
3 final approval from California Superior Courts. Hammond Decl. ¶ 27. This allocation is fair and  
4 reasonable for several reasons.

5 First, the overall settlement resulted in significant relief, which is what courts look at when  
6 assessing amount attributed to PAGA penalties. *O'Connor v. Uber Techs., Inc.*, No. 201 F. Supp.  
7 3d 1110, 1134 (N.D. Cal. Aug. 18, 2016) (where settlement for the class claims is robust, the purpose  
8 of PAGA may be fulfilled because by providing fair compensation to class members, the settlement  
9 has a deterrent effect on defendant and other employers, thus fulfilling the purpose of PAGA).  
10 Hammond Decl. ¶ 28.

11 Second, the Court could reduce any award of PAGA penalties as "unjust, arbitrary and  
12 oppressive, or confiscatory" under Labor Code § 2699(e)(2) because the maximum PAGA penalties  
13 (\$876,500) are more than 100% of the damages expenses allegedly incurred by the Class (\$833,600).  
14 Id. ¶ 29.

15 Third, in order to recover any PAGA penalties, Plaintiff would be required at trial to prove  
16 that each employee suffered a violation for each pay period the employee worked, which would be  
17 difficult in light of Defendant's contentions discussed above. *Id.* ¶ 30.

18 Fourth, although class certification requirements do not apply to PAGA claims, "such claims  
19 can be stricken if they are found to be 'unmanageable,'" and because only CMs who actually incurred  
20 unreimbursed expenses during a particular pay period could recover PAGA penalties for those  
21 violations, Defendant could have disputed that there is a manageable way to determine who was  
22 entitled to such penalties. *See, e.g., Raphael v. Tesoro Ref & Mktg. Co.*, No. 2:15-cv-02862-ODW,  
23 2015 U.S. Dist. LEXIS 130532, at \*5 (C.D. Cal. Sept. 25, 2015). Hammond Decl. ¶ 31.

### 24 **3. The Risk, Expense, Complexity, and Likely Duration of Further Litigation** 25 **Support the Reasonableness of the Settlement**

26 If litigation were to proceed, Plaintiff would face a serious risk posed by Defendant's  
27 affirmative defense that Plaintiff has waived his right to bring class claims. Hammond Decl. ¶ 22-  
28 23. In addition, Plaintiff would have faced arguments that class certification was not appropriate,  
given that CMs incurred different expenses and different work circumstances, and the expenses that  
were reasonable for one CM might not have been reasonable for another. Hammond Decl. ¶ 20. On  
the merits, Plaintiff faced a risk that not all CMs would have incurred certain types of expenses, and  
that a fact-finder would have found that Plaintiff's estimated damages were greatly inflated,  
especially when considering that many CMs were part-time employees. *Id.* ¶ 21.

1 Even if this matter proceeded to trial, voluminous evidence would be needed to prove  
2 damages; expert testimony and expert discovery could be required to prove the damage calculations;  
3 and trial would be complex given the number of employees involved. *Id.* ¶ 25. Regardless of which  
4 side prevailed on the arbitration issue, on class certification, or at trial, an appeal would be likely,  
5 creating additional delay and uncertainty for the employees' receipt of any recovery. *Id.*

6 This Settlement provides an efficient resolution of this dispute, and CMs will obtain a  
7 substantial recovery now without the major risks and lengthy delays that further litigation would  
8 entail.

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

10 The Settlement is the result of arm's-length negotiations between the Parties, reached after a  
11 full-day mediation with an experienced mediator. Hammond Decl. ¶ 17. Plaintiff engaged in  
12 significant informal discovery, surveyed CMs, located relevant publicly available information from  
13 Defendant's website, and reviewed Plaintiff's documents. *Id.* ¶ 16-17. Plaintiff was well-informed  
14 about the strengths and weaknesses of the Class's claims, and well-positioned to conclude that this  
15 Settlement was an excellent outcome for the Class.

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

17 As discussed above, Class Counsel has extensive experience in class action litigation, and, in  
18 particular wage-and-hour class actions, and have been determined by numerous courts to be adequate  
19 class counsel. Hammond Decl. ¶¶ 6-7. Class Counsel has represented thousands of adjunct  
20 instructors and employees in similar unpaid wage cases since 2016, and recently litigated one such  
21 case all the way through trial. *Id.* Class Counsel considers the settlement to be fair, reasonable and  
22 adequate. The gross share per Class Member is \$1,022.01 and the net is \$567.35. *Id.* ¶ 24. The gross  
23 value per pay period is \$38.99 and the net value is \$21.64, and a Class Member who worked for the  
24 entire 3-year Class Period will receive \$1,558.08. *Id.* These are very good results when considering  
25 Defendant's many defenses discussed above.<sup>1</sup>

#### 26 **B. The Proposed Class Notice Content and Procedure Are Adequate**

27 Constitutional due process requires that CMs be provided with notice sufficient to give them  
28 an opportunity to be heard. *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).  
Proper notice must provide information to allow CMs to make an informed decision to accept or  
object to the settlement. *Id.*; *see also Wershba v. Apple Comput., Inc.*, 91 Cal. App. 4th 224, 251-52

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<sup>1</sup> The final prong of the *Kullar* test – the reaction of the Class – will be evaluated at final approval.

1 (2001). Here, the proposed Notice provides: (1) the material terms of the Settlement, (2) the CM's  
2 anticipated Settlement share, (3) how to object or opt out, (4) how to obtain more information about  
3 the claims, (5) the proposed fees and costs of Class Counsel and for settlement administration, (6)  
4 the proposed service award to the Class Representative, and (7) the date and time of the final approval  
hearing. *See Exhibit A* to the SA (Class Notice); *see also* Cal. Rules of Court, Rule 3.766.

5 The procedure for distribution of Notice has “a reasonable chance of reaching a substantial  
6 percentage of the [CMs].” *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 974 (1975). The Notice will be  
7 sent by first class mail to the most recent address of each CM. SA §§ 11.1.1-11.1.3. If a Notice is  
8 returned as undeliverable, CPT will use skip tracing and resend it if a new address is identified. SA  
9 § 11.1.4. As such, the Notice is likely to reach most, if not all, CMs.

10 **C. The Class Representative Service Award Is Preliminarily Reasonable**

11 In conjunction with seeking final approval, Plaintiff will move for approval of a Class  
12 Representative Service Award of \$7,500 to recognize the time and effort he expended for the Class,  
13 as well as the general release he is giving CLU. Hammond Decl. ¶ 32. The requested award falls  
14 well within the range of incentive payments typically awarded to Class Representatives in similar  
15 class actions. *See, e.g., Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1393 (2010)  
(affirming awards of \$10,000).

16 **D. The Requested Attorneys' Fees and Costs Are Preliminarily Reasonable**

17 Also in conjunction with final approval, Plaintiff will move for an award of attorneys' fees of  
18 one-third of the GSA, or \$216,666.67. SA § 5. This fee amount is fair, reasonable and represents  
19 the one-third typically approved in class actions by California courts. *See, e.g., Laffitte v. Robert*  
20 *Half Internat. Inc.*, 1 Cal. 5th 480, 487, 596 (2016) (affirming a fee award representing one-third of  
21 the fund). Plaintiff will also request reimbursement for out-of-pocket litigation costs up to \$25,000.  
22 *Id.* The Court need not decide now the attorneys' fees and expenses to approve – if the Court grants  
23 preliminary approval, Class Counsel will file a fully-briefed motion for attorneys' fees and costs,  
supported by detailed lodestar information, to be heard after the completion of the Notice process.  
Hammond Decl. ¶ 35.

24 **E. The Cy Pres Designee is Appropriate**

25 The Settlement designates Kingsmen Shakespeare Company as *cy pres* recipient under Cal.  
26 Code of Civ. Proc. § 384. SA § 15.2. Non-profit Kingsmen Shakespeare Company is dedicated to  
27 presenting professional programs and performances of the works of William Shakespeare for the  
28 education and entertainment of people of all ages. Hammond Decl. ¶ 36. In compliance with Code  
of Civil Procedure § 382.4, Class Counsel certifies that they have no connection to or relationship

1 with Kingsmen Shakespeare Company that could reasonably create the appearance of impropriety  
2 as between the selection of the recipient of the money or thing of value and the interests of the class.  
3 *Id.*

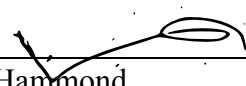
## 4 VI. CONCLUSION

5 The Settlement is well within the range of acceptable settlements and provides substantial  
6 monetary relief to the Class. Plaintiff requests that the Court conditionally certify the Class for  
7 settlement purposes, preliminarily approve the Settlement, and order that Notice be provided to the  
8 Class as set forth in the proposed Order.

9 DATED: August 29, 2022

Respectfully submitted,

10 HAMMONDLAW, P.C.

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12 \_\_\_\_\_  
13 Julian Hammond

14 *Attorneys for Plaintiff and the Putative Class*  
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