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

10 **COUNTY OF VENTURA**

11
12 **MICHAEL UGUCCIONI**, individually and on
behalf of all others similarly situated,

13 Plaintiff,

14 vs.

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

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

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

Date: October 14, 2022

Time: 8:30 a.m.

Dept.: 40

Reservation # 2670143

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 founding shareholder of the law firm HammondLaw, P.C. (“HammondLaw”) and counsel (“Class Counsel”) for the named Plaintiff Michael Uguccioni and proposed Class Counsel
8 for 636 employees who were employed by California Lutheran University (“Defendant” or “CLU”) from
9 June 1, 2019 through May 31, 2022 (“Class Period”) and worked remotely (“Class Members” or “CMs”).
10 I have no knowledge of the existence of any conflict of interest between Class Counsel, Plaintiff, and any
11 Class Member.

12 4. I submit this declaration in support of Plaintiff’s Motion for Preliminary Approval of Class
13 Action Settlement.

14 5. A true and correct copy of the executed Settlement Agreement is submitted to the Court
15 as Exhibit 1 to the Proposed Order Granting Preliminary Approval of Class Action Settlement.

16 **II. ATTORNEY EXPERIENCE**

17 6. HammondLaw has been certified as Class Counsel or Co-Class Counsel in at least [55]
18 class action lawsuits, representing thousands of class members, in the Superior Courts for the Counties
19 of Alameda, Los Angeles, Sacramento, San Diego, San Francisco, Solano, Santa Clara, Monterey, San
20 Joaquin, Placer, Orange, Contra Costa, San Bernardino, and in federal District Courts in California in
21 diversity jurisdiction cases based on state law, over the last ten years. In addition, HammondLaw is
22 putative Class Counsel in at least 20 pending actions in California Superior Courts, some of which have
23 been tentatively settled and/or preliminarily approved by the Courts.

24 7. I graduated from the University of South Wales with a Bachelor of Commerce in 1995,
25 from the University of Technology in Sydney with a Bachelor of Law *summa cum laude* in 1999, and
26 from New York University School of Law with a Masters of Law in 2001. I founded HammondLaw in
27 2010. Since the founding of HammondLaw, I have devoted a substantial percentage of my practice to
28 litigating cases involving consumer, employment, and other class actions. My firm has represented tens
of thousands of consumers in class actions under California law and in California courts.

¹ 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 8. My associates, Polina Brandler and Ari Cherniak, played an active role in this case. Ms.
2 Brandler received her B.A. in history *cum laude* from the Macaulay Honors College at the City University
3 of New York in 2005, and her J.D. from the Benjamin N. Cardozo School of law in 2009. While in law
4 school, Ms. Brandler was an intern for the Honorable Sandra L. Townes of the Southern District of New
5 York. After graduation, she clerked for the Honorable Anita H. Dymant of the Appellate Division of the
6 Los Angeles Superior Court from 2009 to 2012. During her time at HammondLaw, which is the last
7 decade, her practice has focused on wage and hour and consumer class actions. Ms. Brandler is admitted
8 to practice law in California and New York.

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

14 10. Since 2016, HammondLaw has represented adjunct instructors and secured court-
15 approved settlements in over 20 wage and hour class actions against universities throughout California.
16 HammondLaw has also successfully negotiated class action settlements on behalf of adjunct instructors
17 in approximately three other cases in various stages of settlement approval, and recently litigated one
18 such case—*Gola v. University of San Francisco*, No. CGC-18-565018 (San Francisco Super. Cty. Ct.)—
19 all the way through trial. These cases challenged a long-standing, industry-wide practice of classifying
20 adjunct instructors as non-exempt and not paying them for all hours worked. The cases have led to an
21 overhaul of the classification and compensation practices in the industry.

22 11. Class Counsel’s broad collective experience in the prosecution and resolution of wage and
23 hour class action litigation specifically on behalf of California instructors and other employees enabled
24 Counsel to efficiently assess the value of the claims of Class Members and to obtain an efficient
25 settlement.

26 **Procedural Background**

27 12. Plaintiff filed this action on November 17, 2021, asserting claims for CLU’s alleged
28 failure to reimburse its instructors who taught online courses during the Fall 2019 and Fall 2021
semesters, as well as other employees working remotely due to COVID-19, for necessary business
expenses associated with working remotely in violation of Labor Code § 2802, including home internet
expenses and other remote work expenses. Plaintiff alleged that even if CMs would have paid for home

1 internet or other costs regardless of whether they performed work for CLU, CLU was still required to
2 reimburse a reasonable percentage of that cost.

3 13. On December 22, 2021, Defendant filed an Answer with a General Denial and seventeen
4 affirmative defenses, including that the “Court lacks subject matter jurisdiction over Plaintiff’s Complaint
5 because there is a valid and binding arbitration agreement between the parties that controls this dispute.”

6 14. Prior to the filing of the Complaint, pursuant to Labor Code § 2699, Plaintiff also provided
7 Private Attorneys General Act (PAGA) Notice of Claims to the Defendant, with the intention of adding
8 a PAGA claim to the case following the expiration of the requisite Notice period. Following Defendant’s
9 filing of its Answer, the Parties agreed to stay Plaintiff’s deadline to add a PAGA cause of action to the
10 Complaint, engage in informal discovery, and to attend mediation. Following the mediation and the
11 reaching of settlement, Plaintiff filed his First Amended Complaint (FAC), which added a PAGA claim
12 and re-defined the Class Period as from June 1, 2019 to May 31, 2022.

13 15. Prior to the mediation, Defendant produced documents necessary to value the class claims
14 including (a) number of employees who worked remotely between March 15, 2020 and July 15, 2021
15 (when CLU reopened its campuses); (b) number of instructors who taught online / hybrid courses during
16 the Fall 2019 and Fall 2021 academic terms; (c) communications issued by CLU related to the campus
17 shutdowns; and (d) CLU’s reimbursement policy.

18 16. Additionally, Plaintiff’s counsel gathered information from Defendant’s website
19 concerning CLU’s response to COVID-19 and CLU’s policies and procedures concerning remote work.
20 Plaintiff’s counsel conducted an online survey of CMs, with 100% of respondents reporting that they
21 incurred home office expenses, yet received no reimbursement from CLU.

22 17. On May 24, 2022, the Parties attended a full-day mediation with Louis Marlin, an
23 experienced mediator. Plaintiff submitted a detailed mediation brief accompanied by 19 exhibits. The
24 brief described the facts and law, summarized the informal discovery exchanged in aid of mediation, and
25 presented a calculation of damages for the underlying unreimbursed expense claims if the case were to
26 be certified as a class action and go to trial.

27 **The Settlement Is Fair and Reasonable**

28 18. Plaintiff calculated Defendant’s maximum exposure on the unreimbursed expense claim
as follows: based on data provided by Defendant, the Class worked 13,281 pay periods during the Class
Period, including 3,391 monthly pay periods and 9,890 bi-monthly pay periods. Based on conversations
with Plaintiff, and responses gathered from online surveys, Plaintiff assumed \$100 per month was a
“reasonable percentage” of expenses incurred by the Class. Thus, the Class incurred (\$100 * 3,391

1 monthly pay periods) + (\$50 * 9,890 bi-monthly pay periods), or \$833,600 in unreimbursed expense
2 during the Class Period. Interest at 10% adds \$125,040 for a total of **\$958,640**.

3 19. The \$650,000 Gross Settlement represents 68% of Defendant's maximum exposure
4 without any discounts to reflect the risks and delays that the Class would face if litigation were to
5 continue.

6 20. Such risks include Defendant's contention that it did reimburse business expenses under
7 its existing reimbursement policy, and its contention that Plaintiff would be unable to certify his class
8 claims, given that CMs had different expenses and different work circumstances, and the expenses that
9 were reasonable for one CM might not have been reasonable for another. Defendant contended that, as a
10 result, individualized issues would prevent class certification in this case.

11 21. Defendant also contended that not all CMs would have incurred the same expenses, and
12 that a fact-finder would have found that Plaintiff's estimate of \$100 per month was far more than the
13 "reasonable percentage" of reimbursement, considering that many CMs were part-time employees, and
14 Plaintiff's damages calculation were inflated.

15 22. Defendant also could have contended that Plaintiff's class claims were barred by the
16 arbitration agreement it required Plaintiff to agree to as part of his employment, which stated:

17 The parties to this Agreement agree to arbitrate any and all disputes, claims, or controversies
18 ("claims") they may have against each other, including their current and former, agents, owners,
19 officers, directors, or employees, which arise from the employment relationship between
20 Employee and Employer or the termination thereof. Claims covered by this Agreement include,
21 but are not limited to: claims of employment discrimination and harassment under Title VII of
22 the Civil Rights Act, as amended; the California Fair Employment & Housing Act; the Age
23 Discrimination in Employment Act, as amended; the Americans with Disabilities Act; 42 U.S.C.
24 section 1981; the Employment Retirement Income Security Act; the California Labor Code,
25 including any claims brought by the Employee related to wages; breach of employment contract
26 or the implied covenant of good faith and fair dealing, wrongful discharge; or tortious conduct
27 (whether intentional or negligent) including defamation, misrepresentation, fraud, infliction of
28 emotional distress, but excluding claims for workers' compensation benefits to remedy work-
related injury or illness. The parties understand and agree that they are waiving their right to bring
such claims to court, including the right to a jury trial.

23 23. Defendant could have contended that the Court would find its arbitration clause
24 enforceable, and that Plaintiff had waived his right to pursue class and PAGA representative claims as
25 well.

26 24. Given the risk posed on the merits and certification/manageability, and the potential risk
27 posed by the arbitration agreement, Plaintiff views the outcome as an excellent result for the Class. The
28

gross share per Class Member is \$1,022.01² and the net share is \$567.35.³ The gross value per pay period is \$38.99⁴ and the net value is \$21.64.⁵ A Class Member who worked for the entire 3-year Class Period will receive \$1,558.08,⁶ in addition to his or her *per capita* share of PAGA penalties.

25. Absent a settlement, the case could take years to resolve, as Plaintiff's Counsel know from litigating similar wage and hour cases. If litigation were to proceed, Plaintiff would face a serious risk posed by Defendant's affirmative defense that Plaintiff has waived his right to bring class claims. 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. Even if this matter proceeded to trial, voluminous evidence would be needed to prove damages; expert testimony and expert discovery could be required to prove the damage calculations; and trial would be complex given the number of employees involved. Regardless of which side prevailed on the arbitration issue, on class certification, or at trial, an appeal would be likely, creating additional delay and uncertainty for the employees' receipt of any recovery. This Settlement provides an efficient resolution of this dispute, and CMs will obtain a substantial recovery now without the risks and lengthy delays that further litigation would entail.

PAGA Penalties Allocation is Reasonable

26. Plaintiff calculated Defendant's exposure on PAGA penalties as follows: There were approximately 8,765 pay periods during the PAGA Period (from May 21, 2020 to May 31, 2022).⁷ Using a penalty of \$100 per pay period (because Defendant never received notice from the Labor Commissioner or the Court so there are arguably no "subsequent" violations) Defendant's maximum exposure is **\$876,500**.

² \$650,000 / 636 employees

³ \$360,833.33 Net Settlement / 636 employees. The Net Settlement is the amount remaining after deduction of attorneys' fees (\$216,666.67), costs (\$25,000), service award (\$7,500), PAGA Penalties (\$25,000), and administration costs (\$15,000).

⁴ \$650,000/ 16,672 pay periods. In determining the number of pay periods worked by a Class Member, those Class Members who were paid once a month will be credited with two pay periods per monthly payment (i.e., have a 2x multiplier applied to their monthly pay periods) and Class Members who were paid bi-weekly will be credited with one pay period per payment.

⁵ \$360,833.33 / 16,672 pay periods.

⁶ (36-month Class Period * 2 pay periods per month = 72 pay periods). (72 pay periods * \$21.64 per pay period = \$1,558.08)

⁷ The PAGA Period is two-thirds of the Class Period. As stated above, there were 3,391 monthly pay periods during the three-year Class Period, and 9,890 bi-monthly pay periods, or a total of 13,281 pay periods. (13,281 pay periods * 0.66 = 8,765)

1 27. The \$25,000 allocated to PAGA penalties represents 3% of Defendant’s PAGA exposure
2 and is comparable to (or more than) PAGA allocations in other wage and hour cases that received final
3 approval from California Superior Courts including *Parsons v. La Sierra University*, Case No.
4 CVRI2000104 (Riverside County Superior Court) (May 19, 2022) (finally approving \$15,000 allocated
5 to PAGA penalties representing 2% of Defendant’s total exposure to PAGA penalties of \$737,000);
6 *Sweetland-Gil v University of the Pacific*, Case No. STK-CV-UOE-2019-0014682 (San Joaquin County
7 Superior Court) (March 4, 2022) (finally approving \$30,000 allocated to PAGA penalties representing
8 1.6% of Defendant’s total exposure to PAGA penalties of \$1,517,700); *Solis et al. v Concordia*
9 *University Irvine*, Case No. 30-2019- 01114998-CU-OE-CXC (Orange County Superior Court)
10 (February 3, 2022) (finally approving a PAGA allocation of \$20,000, representing 2% of the maximum
11 \$972,700 in PAGA penalties); *Pillow et al. v Pepperdine University*, Case No. 19STCV33162 (Los
12 Angeles Superior Court)(July 28, 2021) (finally approving PAGA allocation of \$15,000, representing
13 1% of the maximum \$1,619,200 in PAGA penalties); *Moore et al v Notre Dame De Namur University*,
14 Case No. 19-CIV-04765 (San Mateo County Superior Court) (July 1, 2021) (finally approving PAGA
15 allocation in the amount of \$12,000, representing 1.9% of the maximum \$631,300 in PAGA penalties);
16 *Mooiman et al. v Saint Mary’s College of California*, Case No. C19-02092 (Contra Costa County
17 Superior Court) (June 10, 2021) (finally approving \$30,000 PAGA allocation representing 1% of the
18 maximum \$649,200 in PAGA penalties, and explaining that “the record indicates that defendant changed
19 many of the policies at issue before the action was brought, that there is a substantial monetary award
20 which in part serves the deterrent function of a penalty, and that defendant had some arguments of “good
21 faith,” that would mitigate penalties”); *Morse v Fresno Pacific University*, Case No. 19-CV-04350
22 (Merced County Superior Court) (April 6, 2021)(finally approving \$30,000 PAGA allocation,
23 representing 2% of maximum \$1,194,800 in PAGA penalties); and *Harris-Foster v. University of*
24 *Phoenix*, Case No. RG19019028 (Alameda County Superior Court) (March 17, 2021) (finally approving
25 \$50,000 PAGA allocation, representing 1.5% of maximum \$3,173,200 in PAGA penalties).

26 28. This allocation is fair and reasonable for several reasons. First, the overall settlement
27 resulted in significant relief for each Class, which is what courts look at when assessing amount attributed
28 to PAGA penalties.

29 29. Second, Defendant could have contended that the Court would reduce any award of PAGA
30 penalties as “unjust, arbitrary and oppressive, or confiscatory” under Labor Code § 2699(e)(2) because
31 the maximum PAGA penalties (\$876,500) are more than 100% of the unreimbursed expenses allegedly
32 incurred by the Class (\$833,600)

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

4 31. Finally, although class certification requirements do not apply to PAGA claims, "such
5 claims can be stricken if they are found to be 'unmanageable,' and because only Class Members who
6 actually incurred unreimbursed expenses during a particular pay period could recover PAGA penalties
7 for those violations, Defendant could have disputed that there is a manageable way to determine who was
8 entitled to such penalties.

9 **The Class Representative Service Award Is Preliminarily Reasonable**

10 32. In conjunction with seeking final approval, Plaintiff will move for approval of a Class
11 Representative Service Award of \$7,500 to recognize the time and effort he expended for the Class, as
12 well as the general release he is giving CLU. The requested award falls well within the range of incentive
13 payments typically awarded to Class Representatives in similar class actions

14 **The Requested Attorneys' Fees and Costs Are Preliminarily Reasonable**

15 33. Also in conjunction with final approval, Plaintiff will move for an award of attorneys'
16 fees of one-third of the \$650,000 GSA, or \$216,666.67. This fee amount is fair, reasonable and represents
17 the one-third typically approved in class actions by California courts. This is fair, reasonable and adequate
18 to compensate Class Counsel for the substantial work they have already done to prosecute this Action,
19 the risk they assumed to agree to take the case in the first place, the great expense spared to the Class by
20 Class Counsel having achieved a successful resolution, and the continued time and expense that Class
21 Counsel will incur by administering the fair distribution of the settlement fund should this Court grant
22 the settlement's approval.

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

27 35. If the Court grants Preliminary Approval and authorizes the dissemination of notice of the
28 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

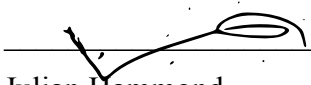
1 approval and the motion for attorneys' fees and reimbursement of litigation costs, coordinating with the
2 settlement administrator, and answering calls and questions from Class Members.

3 **Cy Pres Beneficiary**

4 36. The Settlement designates Kingsmen Shakespeare Company as *cy pres* recipient under
5 Cal. Code of Civ. Proc. § 384. Non-profit Kingsmen Shakespeare Company is dedicated to presenting
6 professional programs and performances of the works of William Shakespeare for the education and
7 entertainment of people of all ages. See <https://kingsmenshakespeare.org/about/>. In compliance with
8 Code of Civil Procedure § 382.4, I and my firm have no connection to or relationship with Kingsmen
9 Shakespeare Company that could reasonably create the appearance of impropriety as between the
10 selection of the recipient of the money or thing of value and the interests of the class.

11 I declare under penalty of perjury under the laws of the United States and the State of California
12 that the foregoing is true and correct.

13 Dated: August 29, 2022

14 
15 Julian Hammond