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10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**
12

13 **CADYN CATHERS**, individually and on behalf
of himself all others similarly situated,

14 Plaintiff,

15 vs.

17 **MOUNT SAINT MARY'S UNIVERSITY**, a
18 California Non-Profit Corporation,

19 Defendant.

CASE NO. 22STCV02941

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

Date: October 17, 2023

Time: 10:00 a.m.

Dept. 7

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I. INTRODUCTION

Plaintiff Cadyn Cathers seeks preliminary approval of a \$1,110,000 non-reversionary settlement of his wage and hour claims against Mount Saint Mary's University ("Defendant" or "MSMU") on behalf of 840 adjunct instructors employed by MSMU in California ("Class Members" or "CMs") from January 25, 2018 through May 9, 2023 ("Class Period"). The Settlement Agreement is attached as **Exhibit 1** to the Proposed Order, filed herewith.

Plaintiff alleges that during the Class Period, MSMU misclassified CMs as professionally exempt, failed to pay for all hours worked, failed to provide CMs paid off-duty rest breaks, failed to issue accurate itemized wage statements, failed to pay CMs all wages due upon discharge, and failed to reimburse remote work expense, in violation of Labor Code §§ 226(a), (e), 226.2, 226.7, 1194, and 2802.

The settlement was reached after a thorough investigation by Plaintiff's Counsel and a full-day mediation with mediator Lisa Klerman. If approved, the Settlement will provide meaningful recovery for the CMs, with an average recovery per CM of \$1,321.43 gross and \$763.69 net, and an estimated high recovery of \$2,402.37. Declaration of Julian Hammond in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Hammond Decl."), ¶ 48. The Gross Settlement represents 17% of MSMU's maximum exposure on Plaintiff's class claims, and 73% of its realistic exposure. Id. This is an excellent result in light of the significant risks Plaintiff would have faced if this case did not settle.

The Settlement Agreement avoids all the risks associated with the typical litigation, is fair and reasonable, and satisfies the criteria for judicial approval. Accordingly, the Court should grant preliminary approval, approve the proposed Notice, and set a date for a final approval hearing.

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II. OVERVIEW OF THE SETTLEMENT

The Settlement Agreement ("SA" in reference to its provisions) resolves all claims of the Plaintiff and the proposed Class. A summary of the Settlement terms is as follows:

1. Total Settlement Amount ("GSA") – MSMU will pay a non-reversionary sum of \$1,110,000 to settle all claims alleged in this lawsuit, in addition to the employers share of payroll tax. SA § 3.1.

2. Attorneys' Fees, Costs, and Service Award – Class Counsel will seek attorneys' fees of up to 35% of the GSA, up to \$25,000 to reimburse its out-of-pocket litigation costs, and Service Award of up to \$10,000 for the named Plaintiff. SA §§ 3.2.1 -2.

3. PAGA Award – The Settlement allocates \$30,000 for the PAGA claim, to be divided 75/25 between the LWDA and CMs employed during the PAGA period. SA § 3.2.7.

1 4. Settlement Administrator and Administration Costs – The Parties have mutually agreed
2 to use Simpluris, Inc. as the Administrator. SA §§ 1.25, 9. Settlement Administration Costs are capped
3 at \$12,000. SA § 3.2.3.

4 5. Net Settlement Amount (“NSA”) – The NSA – the amount remaining of the GSA after
5 deductions of attorneys’ fees, costs, service award, settlement administration costs, and PAGA penalties,
6 if approved in full - will total approximately \$641,500. The NSA will be paid out to CMs *pro rata* based
7 on the number of pay periods they worked during the Class Period. SA § 3.2.4.

8 6. Disputes – If any CM disagrees with the dates of employment or pay periods information
9 provided on their Notice, they may dispute such information. SA § 7.6. Simpluris will resolve challenges
10 based on Defendant’s records and any documents or information presented by the CMs. SA § 7.8.4.

11 7. Opting Out or Objecting – CMs who wish to opt-out of the Settlement must send a written
12 notice to Simpluris within 45 days of the mailing of the Notices. SA § 7.5. CMs who do not opt-out may
13 object to the Settlement by sending an objection to Simpluris within 45 days of the mailing of the Notices.
14 SA § 7.7. CMs who notices are remailed will have an additional 14 days to object. SA § 7.7.2.

15 8. Tax Consequences of Settlement Payments – For tax purposes, payments will be allocated
16 1/3 to wages and 2/3 to penalties and interest. PAGA payments will be allocated 100% to penalties. SA
17 §§ 3.2.5.

18 9. Uncashed Checks – Subject to Court approval, uncashed checks will escheat to the State
19 Controller’s Unclaimed Property Fund. SA § 4.4.3.

20 10. Scope of Release and Final Judgment – CMs will release all claims alleged in the
21 operative Complaint and arising during the Class Period. SA § 5.1 – 5.2. The Named Plaintiff will give
22 a general release as consideration for his Service Award. SA. § 5.3.

23 **III. OVERVIEW OF THE LITIGATION**

24 **A. Procedural History**

25 On January 25, 2022, Plaintiff filed his Complaint, alleging that CMs were non-exempt
26 employees under both Wage Order No. 4, § 1 and Labor Code § 515.7. Wage Order No. 4, § 1(A)(3)(d)
27 provides that for CMs to be exempt they must earn “[a] monthly salary equivalent to no less than two
28 times the state minimum wage for employment in which the employee is employed for at least 40 hours
per week.” Labor Code § 515.7 was enacted in September 2020 and provides that CMs employed by
private, non-profit universities chartered in California may be classified as exempt if they are paid a
salary and are compensated a set amount for each “classroom hour” (which under § 515.7 includes such

activities as class preparation and grading) at a minimum rate prescribed by the statute. Lab. Code § 515.7(b)(1)(A)-(D). Hammond Decl. ¶ 7-8.

Plaintiff alleged that CMs were non-exempt because they were not salaried but were paid on a “piece-rate” basis i.e., a flat/ascertainable amount per course taught. Plaintiff further alleged that even if the Course Rate was a salary, CMs did not earn the minimum payments required to be exempt. As a result, Plaintiff alleged that MSMU misclassified CMs as exempt employees, and was required to pay them separately and hourly for non-teaching time (i.e., time spent on course preparation prior to the start of their contracts, and time spent on mandatory training, such as FERPA and sexual harassment training, and faculty meetings), pursuant to Labor Code §§ 1194, 226.2 and Wage Order No. 4, § 4; was required to pay them separately and hourly for time spent on rest breaks and/or authorize and permit paid rest breaks pursuant to Labor Code §§ 226.2, 226.7 and Wage Order No. 4, §§ 4, 12; and was required to issue accurate wage statements to Class Members pursuant to Labor Code §§ 226(a) and 226.2. Plaintiff also alleged that MSMU owed Class Members waiting time penalties under Labor Code § 203 for failure to pay all wages due at the time of discharge, which occurred at the end of each Contract. Finally, Plaintiff alleged that MSMU required and/or expected CMs who taught online courses to do so remotely, and to pay out of pocket for their home office expenses to carry out their job duties for Defendant, for which Defendant did not reimburse them, in violation of Labor Code § 2802. Hammond Decl. ¶ 7-11.

B. Pre-mediation Investigation and Discovery

Following the filing of the Complaint, the parties agreed to attend mediation. In advance of the mediation, MSMU produced key documents and data including (a) course data for each term from Spring 2018 until Fall 2023 including the title of each course, start and end date of each course, start and end time of each class, day(s) of the week on which classes were held, course location, and number of course credits assigned; (b) pay data for each course from Fall 2018 to Fall 2022 including the course pay, number of installments, and date of the first and last installments; (c) Employee and Faculty Handbooks, (d) sample Adjunct Contracts from each year of the Class Period; (e) sample wage statements from each year of the Class Period; and (f) COVID-19 Temporary Voluntary Remote work policy. Hammond Decl. ¶ 12. Plaintiff’s Counsel also conducted their own investigation, gathered additional documents and information from Defendant’s website, and conducted an online survey of the Class Members. Id. ¶ 13.

From informal discovery, Plaintiff ascertained that CMs were employed on a contract-by-contract basis pursuant to standardized Contracts that started on the first day of class and ended on the last day of class. Each contract provided for compensation based on the number of units in the assigned Course (“Course Rate”) and set out the number of monthly installments over which the compensation would be

1 paid, the date of the first and last installment, and job duties that CMs were required to perform before,
2 during, and after the Contract period. The Contracts directed CMs to prepare and submit a syllabus to
3 MSMU prior to the first day of the class (and prior to the Contract start date); submit grades after the end
4 of classes (and after to the Contract end date); and attend mandatory meetings and trainings during the
5 term of the Contract. The Contracts provided that there was “no expectation that employment [would]
6 be renewed after the completion of the contract period.” Hammond Decl. ¶ 14.

7 Plaintiff analyzed the pay data provided by Defendant and determined that from the beginning of
8 the Class Period until Spring 2021, Class Members earned below the monthly exemption threshold under
9 Wage Order No. 4, § 1(A)(3)(d) during most pay periods. However, starting in Spring 2021, CMs met
10 or exceeded the per classroom hour earnings requirement under Labor Code § 515.7. *Id.* ¶ 15.

11 Finally, reviewed MSMU’s expense reimbursement policy that allowed CMs to submit a
12 completed expense report and receive reimbursement but Plaintiff alleged that Defendant made few or
13 no reimbursements pursuant to this policy. Hammond Decl. ¶ 16.

14 **C. Mediation**

15 On February 8, 2023, the parties attended a full-day mediation with Lisa Klerman, a highly
16 respected mediator. Hammond Decl. ¶ 17. Prior to the mediation, Plaintiff submitted a detailed brief
17 with damages analysis based on the data obtained in informal discovery. *Id.* During mediation, the parties
18 agreed to resolve their dispute according to the terms set out in the Settlement Agreement that is now
19 submitted to the Court for approval. *Id.* ¶ 20.

20 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS APPROPRIATE**

21 When a negotiated class action settlement has been reached prior to certification – as here – the
22 court may make an order approving or denying certification of a provisional settlement class. Cal. Rules
23 of Court, Rule 3.769(d). The decision to certify a class is purely a procedural one and should be based
24 on the allegations in the Complaint and not on the perceived factual or legal merit of the class claims.
25 *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-41 (2000).

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

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

Class Members are “ascertainable” where they may be readily identified without unreasonable expense
or time by reference to official records. See *Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955, 980 (2019);

1 *Reyes v. Board of Supervisors*, 196 Cal. App. 3d 1263, 1271 (1987). These criteria are met here as
2 Defendant's records are sufficient to permit identification of the Class Members. The Class is sufficiently
3 numerous since it has 840 members. See *Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981) [42
4 people "is quantitatively sufficient for class action"]; see also 1 Newberg on Class Actions § 3.12 (5th
5 ed. 2011) ("[A] class of 40 or more members raises a presumption of impracticability of joinder."); SA
6 § 8.

7 **B. "Community of Interest" Exists Among Class Members**

8 A "community of interest" requirement embodies three factors: (1) predominant common
9 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
10 class representatives who can adequately represent the class. *Fireside Bank v. Superior Court*, 40 Cal.
11 4th 1069, 1089 (2007) (citations and internal quotations omitted). Each factor to establish a community
12 of interest exists among the Class Members.

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

14 Where an employer's policies or conduct are uniformly directed at a class of employees, like
15 here, the class-wide impact of the defendant's policies satisfies the commonality requirement. See *Sav-*
16 *On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 331 (2004) (upholding class certification, where
17 the common issue was whether the employer properly classified grocery store managers as exempt from
18 California's overtime requirements). Here, Plaintiff challenges common policies raising predominant
19 common questions of law and fact including (1) whether Defendant misclassified CMs as exempt during
20 the Class Period; (2) whether the compensation set out in the Contracts covered work performed prior to
21 the beginning of the Contract and after the end of the Contract; (3) whether CMs were "discharged" for
22 purposes of Labor Code § 201 on the end date specified in the Contract; (4) whether MSMU had a good
23 faith believe that no discharge occurred at the end date specified in the Contract and/or that no wages
24 were due at the time of discharge; (5) whether MSMU's alleged failure to issue wage statements for work
25 performed prior to the Contracts was knowing and intentional and whether CMs suffered injury as a
26 result; (6) whether MSMU failed to provide paid off-duty rest breaks to CMs; and (7) whether MSMU
27 reimbursed business expenses necessarily incurred by CMs as a result of working from home.

28 **2. Plaintiff's Claims Are Typical of the Class Claims**

The "test of typicality 'is whether other members have the same or similar injury, whether the
action is based on conduct which is not unique to the named plaintiffs, and whether other Class Members
have been injured by the same course of conduct.'" See *Seastrom v. Neways, Inc.*, 149 Cal. App. 4th
1496, 1502 (2007); 1-3 California Class Actions Practice and Procedure (2007) § 3.02. Here, Plaintiff's

1 claims are typical of the Class that he seeks to represent because he was subject to the same compensation
2 policies/practices, suffered the same type of injury, and seeks the same types of relief.

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

4 “Adequacy of representation depends on whether the plaintiff’s attorney is qualified to conduct
5 the proposed litigation and the plaintiff’s interests are not antagonistic to the interests of the class.” *Caro*
6 *v. Procter & Gamble Co.*, 18 Cal. App. 4th 644, 669, n.21 (1993) (citations omitted). Both elements are
7 satisfied here. Plaintiff’s Counsel are highly skilled and have extensive class action litigation experience.
8 HammondLaw has been appointed class counsel in numerous class action suits and have represented
9 thousands of adjunct instructors in similar unpaid wage cases since 2016. Hammond Decl. ¶ 5. Plaintiff
10 is committed to representing the interests of the Class, does not have any conflicts with any CMs, and
11 his interests are virtually coextensive with those of the CMs. *See* Declaration of Caden Cathers, filed
12 herewith.

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

14 Plaintiff’s claims are based on his contention that Defendant had uniform policies and/or practices
15 applicable to all CMs that involve common evidence including uniform contracts MSMU issued to CMs,
16 academic calendars, handbooks, compensation policies, payroll calendars, and wage statements. It would
17 be impractical and ineffective to litigate on an individual basis. *See Bufl v. Dollar Fin. Grp., Inc.*, 162
18 Cal. App. 4th 1193, 1208 (2008). The class action mechanism in this case will also allow Plaintiff and
19 CMs to obtain redress for their relatively small claims, which would otherwise be impractical to litigate
20 on an individual basis.

21 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

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

23 Court approval of a class action settlement is a two-step process: (1) a preliminary review and
24 contingent approval by the trial court, and (2) after notice has been distributed to the Class, a hearing
25 and a detailed review that includes their responses. Manual for Complex Litigation (Fourth) § 21.6
26 (“Manual”); Cal. Rules of Court, Rule 3.769(a); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800-
27 1801 (1996). Thus, preliminary approval of the settlement is simply a conditional finding that the
28 settlement appears to be within the range of acceptable settlements. *See, e.g.*, 4 Newberg on Class
Actions § 11.25 (4th ed. 2002); Manual § 21.6. *C.f. North Cnty. Contractor’s Ass’n v. Touchstone Ins.*
Services, 27 Cal. App. 4th 1085, 1094-1095 (1994). Applying the criteria for preliminary approval in
this case reveals a substantial basis for granting the preliminary approval this Motion seeks.

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

2 In analyzing whether a settlement is fair and reasonable, courts consider a number of factors
3 including “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further
4 litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the
5 extent of discovery completed and the stage of the proceedings, the experience and views of counsel,
6 and . . . the reaction of the class members to the proposed settlement.” *Kullar v. Foot Locker Retail, Inc.*,
7 168 Cal. App. 4th 116, 128 (2008) (quoting *Dunk*, 48 Cal. App. 4th at 1801). A settlement is initially
8 “presumed to be fair” when (1) it “is reached through arm’s length bargaining; (2) investigation and
9 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in
10 similar litigation; and (4) the percentage of objectors is small.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th
11 43, 52 (2008) (quoting *Dunk*, 48 Cal. App. 4th at 1802).

12 As discussed below, and as set out in the Hammond Declaration, the proposed Settlement is
13 presumptively fair because (1) it was the product of serious, informed, and non-collusive negotiations,
14 (2) the putative Class is represented by experienced counsel; and (3) the Parties investigated the claims,
15 exchanged key information, and thus Plaintiff’s Counsel was able to make an informed recommendation
16 about the proposed Settlement. In addition, the reasonableness of the Settlement is further supported by
17 the strengths and risk of the claims asserted, the risk of maintaining class action status, the amount
18 offered to settle, and the endorsement of experienced counsel. Together, all of these factors demonstrate
19 that the proposed Settlement is preliminarily fair, reasonable, and adequate.

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

21 California courts recognize that “a presumption of fairness exists where ... [a] settlement is
22 reached through arms-length bargaining.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224,
23 245 (2001) (citation omitted); see also *Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-
24 45 (2009) (upholding trial court’s determination that settlement was “fair, reasonable and adequate”
25 where the settlement “provided valuable benefits to the class ... that were ‘particularly valuable in light
26 of the risks plaintiff would have faced if she proceeded to litigate her case.’”).

27 Here, the settlement is a result of extensive settlement negotiations between the parties conducted
28 at arm’s length and informed by substantial factual and legal investigation. Throughout this case, the
Class has been represented by counsel with extensive experience in wage and hour litigation, and, in
particular, class actions alleging similar types of claims. Hammond Decl. ¶¶ 5-6. Plaintiff’s Counsel
have spent a considerable amount of time prosecuting this case, including, but not limited to, drafting
pleadings, meeting and conferring with Defendant’s Counsel, researching California law, analyzing

documents and data produced by Defendant, preparing for and attending a full-day mediation, and negotiating and finalizing the settlement agreement and related documents. *Id.*, ¶¶ 7-20. As discussed above, the mediation session was with a skilled, experienced mediator Lisa Klerman. *Id.* ¶ 17.

2. The Settlement Amount is Fair and Reasonable Considering the Risks

The amount of the settlement in light of the strength of the plaintiff's case is the most important "reasonableness" factor. *See Kullar*, 168 Cal. App. 4th at 130. In determining whether a settlement is fair, the court must "independently satisfy[] itself that the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." *Id.* at 129. This requires a record that "allows 'an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.'" *Munoz v. BCI Coca-Cola Bottling Co. of L.A.*, 186 Cal. App. 4th 399, 409 (2010) (quoting *Kullar*, 168 Cal. App. 4th at 120).

The \$1,110,000 Settlement will provide CMs with significant payments. The average recovery per CM is \$1,321.43 gross and \$763.69 net, and the highest estimated payment will be approximately \$2,402.37. Hammond Decl. ¶ 48. Because the Settlement is non-reversionary, Defendant will be paying the full Settlement amount. SA § 3.1.

The settlement amount compares favorably with Plaintiff's Counsel's estimated exposure and value of CMs' claims, as discussed below and in greater detail in Hammond Declaration. Plaintiff's Counsel estimates that a complete victory at trial would result in CMs recovering approximately \$6,589,671 (including interest but excluding PAGA), and realistic recovery, taking into consideration Defendant's actual and potential defenses and the risks posed by further litigation, would be \$1,514,620. Hammond Decl. ¶ 65. A summary of the maximum and realistic exposure is as follows:

Labor Code Section	Maximum Damages	Realistic Exposure
Unpaid Wages (§§ 226.2 / 1194)	\$1,378,154	\$344,538
Wage Statements (§§ 226(a), (e))	\$893,100	\$157,218
Rest Breaks (§§ 226.2, 226.7)	\$809,347	\$135,596
Waiting Time Penalties (§ 203)	\$2,692,196	\$673,049
Unreimbursed Expenses (§ 2802)	\$816,873	\$204,218
Total	\$6,589,671	\$1,514,620

Thus, the amount of the gross settlement represents 17% of the maximum possible recovery (excluding PAGA) and 73% of its realistic exposure. *Id.* Although Plaintiff believes that he and the Class have strong claims, he acknowledges there are obstacles as to both the certification, and the merits of each

1 claim, which warrant a settlement at less than “complete victory” value. The risks of each claim are
2 addressed below, along with a comparison of the estimated potential recovery and discounted settlement
3 amount attributable to each claim.

4 **a. Unpaid Wages Claim:** Plaintiff alleged that CMs were employed on a contract-by-
5 contract basis, with each contract beginning and ending on certain dates specified in the contract, but
6 were required to perform work outside of the Contract each term, including preparing course syllabi and
7 submitting final grades. Plaintiff alleges that these tasks were not covered by the compensation specified
8 in the Contract, which was for work during the terms of the contract, and were therefore unpaid (including
9 after the enactment of Labor Code § 515.7). Plaintiff also alleged that MSMU was required to pay for
10 mandatory trainings and meetings separate from the Course Rate either because CMs were piece-rate
11 workers, or because the classroom hour rates set out in § 515.7 only cover “classroom or laboratory time,
12 preparation, grading, office hours, and other course- or laboratory-related work for that course or
laboratory” (see Labor Code § 515.7(b)(1)) but not trainings and/or meetings. Plaintiff calculated
13 Defendant’s maximum exposure on this claim is \$1,378,154 (including interest). Hammond Decl. ¶ 24.

14 **Class Certification and Merits Discounts:** Plaintiff applied a 50% discount for the risk of non-
15 certification on the theory that the Course Rate included activities performed before and after the dates
16 listed in the contract, and on the theory that the amount of time each CM spent on pre-Contract and post-
17 Contract work would lead to individualized issues. As to the merits, Plaintiff applied a further 50%
18 discount for the risk that the Court would find that Plaintiff’s estimated exposure is overstated because
19 many CMs spent far less time per course performing work than Plaintiff estimated, especially those CMs
20 who were teaching a repeat course; and because there is no “prep time” claim after the enactment of
21 Labor Code § 515.7 because the “classroom hour” pay explicitly includes preparation time. Applying
discounts, for settlement purposes, MSMU’s realistic exposure on the unpaid wage claim was reduced
22 to \$344,538. Hammond Decl. ¶ 25.

23 **b. Wage Statement Claim:** Plaintiff alleged that CMs, as non-exempt piece rate employees,
24 were entitled to receive itemized wage statements for each pay period during which they worked, and to
25 receive wage statements that listed their hours worked, hourly rate, and piece rate information, pursuant
26 to Labor Code § 226(a) and 226.2(a). Hammond Decl. ¶ 26. Plaintiff also alleged that MSMU failed to
27 issue *any* wage statement for work performed prior to the Contract start date. Id. Plaintiff alleged that
28 Defendant’s practice was not a result of an unintentional payroll error, or clerical mistake, but rather a
result of Defendant’s regular compensation policies and its policies. As such, the violation of Labor Code
§ 226(a) was knowing and intentional. Plaintiff also alleged that CMs suffered injury pursuant to §

1 226(e)(2)(A). Plaintiff calculated Defendant's maximum exposure on they inaccurate wage statement
2 claim as \$727,550, and on the missing wage statement claim as \$165,550, for a total of \$893,100.
3 Hammond Decl. ¶ 27-29.

4 **Class Certification/ Merits Discounts on the *Missing Wage Statement Claim*:** With respect
5 to Plaintiff's missing wage statement claim, Plaintiff believes that the certification risk for his missing
6 wage statement claim was minimal because wage statement claims are particularly well-suited to class
7 certification and applied only a 10% discount. See *Lubin v. The Wackenhut Corp.*, 5 Cal. App. 5th 926
8 (2016); see also *Torres v. Air to Ground Services, Inc.*, 300 F.R.D. 386, 403 (C.D. Cal. 2014). Hammond
9 Decl. ¶ 30. As to the merits, Defendant contended that it acted in good faith and did not "knowingly and
10 intentionally" fail to provide wage statements because it reasonable believed that prep time was included
11 in the Course Rate as provided under Labor Code § 515.7, and was not liable for statutory penalties under
12 Labor Code § 226(e). Defendant also could have contended that the maximum applicable statutory
13 penalty was the initial penalty of \$50 per wage statement because Plaintiff had not established that
14 Defendant ever received notice from the labor commissioner or a court, and so there are arguably no
15 "subsequent" violations. See *Robison v. Open Top Sightseeing San Francisco, LLC*, 2018 U.D. Dist.
LEXIS 34556, at **52-58 (N.D. Cal. 2018). Plaintiff applied another 25% reduction for this risk,
reducing Defendant's exposure to \$111,746. Hammond Decl. ¶ 30.

16 **Class Certification/ Merits Discounts on the *Inaccurate Wage Statement Claim*:** With respect
17 to Plaintiff's inaccurate wage statement claim, MSMU contended that CMs were properly classified as
18 exempt employees throughout the Class Period and were thus not entitled to wage statements that listed
19 their hours and hourly rates. MSMU contended that, throughout the Class Period, CMs were salaried,
20 not piece-rate employees, because CMs were paid a set amount to teach each scheduled course and
21 received the full amount of pay each week regardless of the quantity or quality of the work performed
22 (i.e., even if the CM missed a class, or ended a class early, he or she was still paid). MSMU contended
23 that CMs' pay was more akin to a "salary" which is defined as a "predetermined amount that is not
24 subject to reduction based upon the quantity or quality of work", than a piece-rate system where
employees typically produced multiple units or pieces per day and can increase their pay by working
harder or more efficiently.

25 As stated above, CMs met or exceeded the per classroom hour earnings requirement under Labor
26 Code § 515.7 during the relevant time period (January 25, 2021 to May 9, 2023), meaning that Plaintiff's
27 inaccurate wage statement claim hinged entirely on the Court finding that the Course Rate is a "piece
28 rate." Plaintiff recognized that a court may find that the course rate is a salary because it appeared that

1 CMs did receive a predetermined amount each pay period that was not subject to change within each pay
2 period based on the number of hours CMs taught, and that his Labor Code § 226(a) claims based only
3 on the “piece-rate” theory would be difficult to certify or win at trial. Accordingly, Plaintiff applied a
4 larger 75% discount for the risk of losing on class certification, and 75% discount on the merits, reducing
5 Defendant’s exposure to \$45,471. Hammond Decl. ¶ 31. After discounts, MSMU’s realistic liability on
6 the wage statement claims was \$157, 218. Id. ¶ 32.

7 **c. Rest Break Claim:** Plaintiff alleges that CMs were non-exempt piece-rate workers and
8 were entitled to paid off-duty rest breaks for every 3.5 hours worked under Labor Code § 226.2 and
9 Wage Order No. 4, § 12, or a premium payment equal to an hour’s pay for a missed rest period was
10 required, under Labor Code § 226.7. Plaintiff alleged that MSMU had no rest break policy applicable to
11 CMs because it classified them as exempt throughout the Class Period. Plaintiff further alleged that
12 MSMU impeded CMs’ ability to take off-duty rest breaks because it expected and/or required CMs to be
13 available to students for the entire scheduled class time. Hammond Decl. ¶ 33. Plaintiff calculated
14 Defendant’s maximum exposure on the rest break claims prior to Spring 2021 as \$453,399, and on the
15 rest break claim after Spring 2021 as \$355,948, for a total of \$809,347. Hammond Decl. ¶ 34-36.

16 **Class Certification and Merits Discounts on Rest Break Claim Prior to Spring 2021:**
17 Plaintiffs applied a 50% discount for the risk of non-certification on the theory that even if CMs were
18 paid on a piece-rate basis, what was included in the piece would depend on each CM’s understanding of
19 what the course rate covered, and individualized issues would predominate. As to Plaintiffs’ claim that
20 CMs were entitled to rest breaks as non-exempt employees but the nature of CMs employment and
21 policies and/or practices of MSMU impeded CMs from taking rest breaks, Defendant could have argued
22 Plaintiff would be unable to certify a class because individualized issues would predominate as to why
23 some CMs took rest breaks while others did not. Hammond Decl. ¶ 37. As to the merits, Defendant
24 contended Plaintiff would lose because CMs could have taken rest breaks if they wanted to, and those
25 who did not did so by choice. Plaintiff applied a 50% discount based on these arguments which reduced
26 MSMU’s exposure on the rest break claims prior to Spring 2021 to \$113,349. Id.

27 **Class Certification and Merits Discounts on Rest Break Claim After to Spring 2021:** As
28 discussed above, after reviewing MSMU’s payroll data and determining that CMs’ earnings met or
exceeded the per classroom hour earnings requirement under Labor Code § 515.7 from Spring 2021 on,
and after considering Defendant’s contention that the Course Rate was a “salary” and not a “piece-rate”,
Plaintiff recognized that his Labor Code § 226.7 claims based only on the theory that CMs were “piece-
rate” workers would be difficult to certify and win at trial. Accordingly, Plaintiff applied a 75% discount

1 for the risk of losing on class certification, and a further 75% discount on the merits, reducing
2 Defendant's exposure on the rest break claims after Spring 2021 to \$22,246. Hammond Decl. ¶ 38. Thus,
3 Defendant's realistic exposure on the rest break claim was \$135,596. Id. ¶ 39.

4 **d. Waiting Time Penalties:** Plaintiff alleged that Defendant employed CMs on a contract
5 basis for a particular term, and CMs were discharged at the end of every contract, for purposes of Labor
6 Code § 201 and, as a result, are entitled to be paid immediately on the end date of each Contract.
7 However, MSMU paid CMs late because it followed its regular monthly payroll schedule and did not
8 pay them their last paycheck on the end date of each Contract. Plaintiff calculated MSMU's maximum
exposure on this claim as \$2,692,196. Hammond Decl. ¶ 41.

9 **Class Certification and Merits Discounts:** Defendant contended that the waiting time penalties
10 claim would not be certified because CMs knew they would teach for consecutive terms or in the same
11 term each year, e.g., every Spring or every Fall. In addition, Defendant could have contended that CMs
12 did not expect to be paid at the end of the contract, but rather according to the regular payroll schedule
13 and the different experiences and expectations of CMs would also lead to individualized issues and
14 prevent class certification. Plaintiff assigned a 50% discount for these arguments. Hammond Decl. ¶ 42.
15 As to the merits, MSMU could have contended that CMs were not discharged at the end of each contract
16 because many CMs returned to teach the same or similar classes each term and because CMs did not
17 have to reapply to teach at MSMU each time they were assigned a course. Id. ¶ 43. MSMU also could
18 have contended that even if Plaintiff could show there was a discharge, it would not be found liable
19 because its actions were not willful, and it has a good faith argument that the wages were not due. *See*
20 *Nordstrom Com'n Cases*, 186 Cal. App. 4th 576, 584 (2010) (trial court did not abuse its discretion in
21 discounting the penalties on a § 203 claim because defendant could avoid the penalties by showing that
a "good faith dispute" existed regarding the claimed wages). Plaintiff applied a further 50% discount for
these arguments which reduced MSMU's exposure to \$673,049. Hammond Decl. ¶ 43.

22 **e. Unreimbursed Expense Claim:** Plaintiff alleged that MSMU required CMs who taught
23 online courses to do so remotely. As a result, CMs incurred remote work expenses in order to perform
24 their job duties for MSMU. Hammond Decl. ¶ 44. Plaintiff calculated CMs unreimbursed expenses as
\$816,873. Id. ¶ 45.

25 **Class Certification and Merits Risks:** Plaintiff applied a 50% discount for class certification based
26 on the fact that there were varying practices with regard to expenses incurred by CMs, whether those
27 expenses were reasonable, and whether CMs requested reimbursement pursuant to MSMU's policies,
28 and whether MSMU approved the request, which would lead to individualized issues. As to the merits,

1 Plaintiff applied a further 50% discount based on the risk that his assumed “reasonable” monthly
2 expenses were inflated given the part-time nature of CM’s employment, and that some of the expenses
3 claimed were not necessary. After applying these discounts, for settlement purposes, Plaintiff calculated
4 MSMU’s realistic damages as \$204,218. Hammond Decl. ¶ 46.

5 **f. PAGA Penalties:** Plaintiff calculated MSMU’s exposure on PAGA Penalties as
6 \$800,900. Hammond Decl. ¶ 50. The \$30,000 allocated to PAGA penalties represents approximately 4%
7 of Defendant’s exposure to PAGA penalties, which is fair and reasonable for several reasons. First,
8 MSMU contended that claims for PAGA Penalties would fail for the same reasons as the underlying
9 Labor Code claims. Id. ¶ 51. Second, MSMU contended that a court could and would drastically reduce
10 penalties as “unjust, arbitrary and oppressive, or confiscatory” (Lab. Code § 2699(i)) because MSMU
11 operated in good faith and reasonably believed it was in compliance with the Labor Code. Id. ¶ 52. Third,
12 MSMU could have argued that CMs’ claims could be “stricken if they are found to be ‘unmanageable.’”
13 *Raphael v. Tesoro Ref & Mktg. Co.*, 2015 U.S. Dist. LEXIS 130532, at *5 (C.D. Cal. Sept. 25, 2015).
14 Hammond Decl. ¶ 53. Fourth, the Settlement provides significant relief for the classes, which is what
15 courts look at when assessing amount attributed to PAGA penalties. *O’Connor v. Uber Techs., Inc.*, 201
16 F. Supp. 3d 1110, 1134 (N.D. Cal. Aug. 18, 2016) (where settlement for the class claims is robust, the
17 purpose of PAGA may be fulfilled because by providing fair compensation to class members, the
18 settlement has a deterrent effect on defendant and other employers, thus fulfilling the purpose of PAGA).
19 Hammond Decl. ¶ 54. Finally, the PAGA allocation is comparable to allocations approved by many
20 California courts in similar cases. Hammond Decl. ¶ 55.

21 **3. The Risk, Expense, Complexity and Likely Duration of Further Litigation**

22 Defendant vigorously contended that Plaintiff would lose on class certification, and
23 Plaintiff acknowledged that he faced the risk of losing on class certification at least as to some of their
24 claims. Assuming some of the claims proceeded to trial, the losing party would likely appeal. This
25 process would take years to resolve. Instead, this settlement provides an early resolution of a dispute,
26 and CMs will obtain a recovery in the relatively near future if the settlement is finally approved.
27 Hammond Decl. ¶ 49.

28 **4. Extent of Discovery Completed and Stage of the Proceedings**

As described in the Hammond Decl. and above, the parties have engaged in extensive
discovery, and were adequately informed to make the decision to settle this case on the proposed terms.
Hammond Decl. ¶ 12-13

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

1 As discussed above, Class Counsel have extensive experience in class action litigation, and, in
2 particular wage-and-hour class actions on behalf of adjunct instructors, and have been determined by
3 numerous courts to be adequate class counsel. Hammond Decl. ¶ 9. Class Counsel have represented
4 thousands of adjunct instructors in at least 30 similar unpaid wage cases since 2016, and recently
5 successfully litigated one such case all the way through trial and an appeal to the California Court of
6 Appeal. Hammond Decl. ¶¶ 10-11. These cases – challenging the long-standing industry-wide practice
7 of classifying adjuncts as non-exempt and not paying them for all hours worked – have led to an
8 overhaul of these practices in the industry. *Id.* Class Counsel considers the settlement to be fair,
9 reasonable and adequate. Hammond Decl. ¶ 70. The average net recovery per CM of \$763.69 is a
substantial amount. *Id.* ¶ 67.

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

11 Constitutional due process requires that class members be provided with notice sufficient to give
12 them an opportunity to be heard in the proceedings. *Mullane v. Central Hanover Bank & Trust*, 339 U.S.
13 306, 314 (1950). Proper notice must provide class members with sufficient information to make an
14 informed decision to accept, opt out or object to the settlement. *See Wershba*, 91 Cal. App. 4th at 251-
15 252. Here, the proposed Notice meets these standards since it provides all the information a reasonable
16 person would need to make a fully informed decision about the settlement: (1) the material terms of the
17 settlement, (2) the proposed fees and costs of Class Counsel and costs of settlement administration, (3)
18 the proposed Service Award; (4) how CMs’ may opt out of, or object to the Settlement; (5) the fact that
19 the Judgment will bind CMs who do not opt out and as to PAGA will bind even those CMs who do opt
20 out, (6) each CM’s proposed allocation; (7) details about the court hearing on settlement approval, and
21 (8) how CMs can obtain additional information. *See* Cal. Rules of Court, Rule 3.766 and **Exhibit A** to
the SA. Therefore, the Court should approve the Notice.¹

22 **D. The Service Award for the Class Representative Is Reasonable**

23 Plaintiff will request a Service Award of \$10,000 to recognize his time and effort expended on
24 behalf of the Class, and the general release he is giving Defendant. SA. ¶ 76. The requested award falls
25 well within the range of incentive payments typically awarded in similar class actions. *See e.g.,*
Cellphone Termination Fee Cases, 186 Cal. App. 4th 1380, 1393 (2010) (affirming incentive awards of

26
27 ¹ The procedure for distribution of notice by first class mail with skip tracing for returned mail (SA §§
28 1.10; 7.4) meets the standard of having “a reasonable chance of reaching a substantial percentage of the
class members.” *Cartt v. Superior Court*, 50 Cal. App. 3d 960, 974 (1975); *see also Wershba*, 91 Cal.
App. 4th at 251. As such, the Notice is likely to reach most, if not all, Class Members.

1 \$10,000).

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

3 In addition, Plaintiff's Counsel will request attorneys' fees of not more than \$388,500 (*i.e.*, 35%
4 of the gross settlement). Hammond Decl. ¶ 56. This fee percentage amount is fair, reasonable and is
5 within the range typically approved in similar class actions by California courts. *Burleigh v. National*
6 *University*, Case No. MSC21-00939 (Contra Costa Cty. Sup. Ct.) (Aug. 26, 2022) (approving fees of
7 40% of \$925,000 class settlement); *Mayton et al v. Konica Minolta Business Solutions USA, Inc.*, Case
8 No. RG12657116 (Alameda Cty. Sup. Ct.) (June 22, 2015) (approving fees of 40% of \$1,225,000 class
9 wage and hour settlement). Plaintiff will also request reimbursement of up to \$25,000 for actual out-of-
10 pocket litigation costs incurred by Class Counsel. Hammond Decl. ¶ 59. If the Court grants preliminary
11 approval, Class Counsel anticipates filing a Motion for Attorneys' Fees and Costs that will be scheduled
12 to be heard following the notice process.

11 **VI. CONCLUSION**

12 The settlement provides substantial relief for the Class and easily passes the *Kullar* analysis.
13 Accordingly, Plaintiff respectfully requests that the Court preliminarily approve the settlement, approve
14 the proposed Class Notice, and schedule a final approval hearing.

15 DATED: July 7, 2023

16 Respectfully submitted,

17 HAMMONDLAW, P.C.

18 s/ Julian Hammond

19 Julian Hammond
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