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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.
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CASE NO. 22STCV02941

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

Date: October 17, 2023

Time: 10:00 a.m.

Dept. 7

1 I, Julian Hammond, declare as follows:

2 1. I am over the age of 18 and have personal knowledge of the facts set forth in this
3 declaration and could and would testify competently to them.

4 2. I am a member in good standing of the Bar of the State of California. I am licensed to
5 practice before all courts in the State of California.

6 3. I am the principal of my own law firm HammondLaw, P.C. ("HammondLaw" or "Class
7 Counsel") and counsel for the named Plaintiff Cadyn Cathers ("Plaintiff") and 840 Class Members who
8 were employed as adjunct instructors by Mount Saint Mary's University ("Defendant" or "MSMU") in
9 California at any time during the period from January 25, 2018 through May 9, 2023 ("Class Period").

10 4. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of
11 Class Action Settlement. A copy of the Class Action Settlement Agreement in this matter is attached as
12 **Exhibit 1** to the proposed order, filed herewith.

13 5. HammondLaw has been certified as Class Counsel or Co-Class Counsel in over 60 wage
14 and hour class actions, representing tens of thousands of employees, including in the Superior Courts for
15 the counties of Alameda, Los Angeles, Sacramento, San Diego, San Francisco, Solano, Santa Clara,
16 Monterey, San Joaquin, Placer, Orange, Contra Costa, San Bernardino, and in federal District Courts in
17 California in diversity jurisdiction cases based on state law, over the last ten years. In addition,
18 HammondLaw is putative Class Counsel in at least 40 pending actions in California Superior Courts, and
19 federal courts, some of which have been tentatively settled and/or preliminarily approved by the courts,
20 and many of which, like the present case, are brought on behalf of adjunct professors.

21 6. My firm's experience in the prosecution and resolution of wage and hour class actions,
22 and particularly wage and hour class actions on behalf of adjunct instructors, was a significant factor in
23 this case proceeding to early mediation and favorable settlement.

24 I. OVERVIEW OF THE LITIGATION

25 A. Procedural History

26 7. On January 25, 2022, Plaintiff filed this lawsuit for Defendant's alleged (i) failure to pay
27 wages for all hours worked in violation of Labor Code §§ 226.2, 1194; (ii) failure to pay hourly and
28 separately for rest breaks and to authorize and permit paid off-duty rest breaks in violation of Labor Code
§§ 226.2, 226.7; (iii) failure to issue accurate itemized wage statements in violation of Labor Code §§
226(a)(2)-(a)(3), (a)(6), 226.2; (iv) waiting time penalties under Labor Code § 203; (v) failure to
reimburse business-related expenses in violation of Labor Code § 2802; and (vi) a UCL claim. Plaintiff
submitted a PAGA Notice to the LWDA and to Defendant on January 10, 2022 alleging the same labor

code violations, and on April 10, 2023, filed a First Amended Complaint adding a PAGA cause of action.¹ Plaintiff's PAGA Notice is attached as **Exhibit 1**.

8. In his First Amended Complaint, Plaintiff alleges that Class Members did not fall within the professional exemption under Wage Order No. 4 § 1(A)(3)(d), which requires that employees who meet the duties test (meaning that employees be primarily engaged in a profession requiring discretion and independent judgment) must earn “[a] monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment” which is defined as “40 hours per week”; or within the professional exemption under Labor Code § 515.7, effective September 9, 2020, which provides that instructors who meet the duties test and are paid on a salary basis may be classified as exempt professionals under a year-dependent “classroom hour” test, wherein each “classroom hour,” including such activities as class preparation and grading, is compensated at a minimum rate per classroom hour.² Plaintiff alleges although MSMU characterized CMs’ course pay as a “salary”, it was in fact a “piece-rate”, 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 monthly or hourly 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 course, 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. Plaintiff alleged that even if CMs *were* properly classified as exempt, MSMU was still required to pay them for their time spent working outside of the Contract, and for non-teaching tasks performed during the Contract, because none of these tasks were included in the Course Rate.

¹ Plaintiff's initial Complaint also sought unreimbursed expenses on behalf of all employees (exempt and non-exempt) who worked remotely for Defendant during the Class Period. On November 10, 2021, plaintiff in a related case, *Roberto Riso v. Mount Saint Mary's University*, Los Angeles Superior Court, 21STCV41382, filed a class action lawsuit seeking unpaid wages and unreimbursed expenses on behalf of all hourly-paid non-exempt employees of Defendant in California from November 10, 2017 to the present. The *Cathers* Action and *Riso* Action overlapped to the extent that they both sought unreimbursed expenses on behalf of non-exempt employees who worked for Defendant during the Class Period. After the parties reached settlement, Plaintiff filed his First Amended Complaint deleting his claim for unreimbursed expenses on behalf of Defendant's hourly-paid non-exempt employees which was alleged in the first-filed *Riso* Action.

² Labor Code § 515.7 provides a minimum rate of \$117 per classroom hour in 2020, increasing to \$126 in 2021, \$135 in 2022, and for 2023 and thereafter, “a percentage increase to the rate” for 2022 pegged to the percentage increase in the state minimum wage prescribed by statute.

1 9. Plaintiff also alleged that, as non-exempt piece rate workers, MSMU was required to pay
2 CMs separately and hourly for time spent on rest breaks and/or authorize and permit paid rest breaks
3 pursuant to Labor Code §§ 226.2, 226.7 and Wage Order No. 4, §§ 4, 12; and was required to issue
4 accurate wage statements to Class Members pursuant to Labor Code §§ 226(a) and 226.2.

5 10. Plaintiff also alleged that MSMU owed Class Members waiting time penalties under
6 Labor Code § 203 for failure to pay all wages due at the time of discharge.

7 11. Finally, Plaintiff alleged that Defendant required and/or expected Class Members who
8 taught online courses to do so remotely, and Class Members incurred home office business as a result,
9 for which Defendant did not reimburse them in full, in violation of Labor Code § 2802.

10 **B. Discovery and Investigation**

11 12. After the parties agreed to mediate, Defendant produced key data and documents in
12 informal discovery including: (a) pay data for each course from Fall 2018 to Fall 2022 including the
13 course rate, number of installments, and date of the first and last installments; (b) course data for each
14 course from Spring 2018 to Fall 2023 including the title of each course, start date and end date of each
15 course, start time and end time of each class, day(s) of the week on which classes are held, course
16 location, and number of course credits; (c) Employee and Faculty Handbooks, (d) sample Adjunct
17 Contracts from each year of the Class Period; (e) sample wage statements from each year of the Class
18 Period; and (f) COVID-19 Temporary Voluntary Remote work policy.

19 13. Plaintiff's counsel also conducted their own investigation, gathered additional documents
20 and information from Defendant's website, and conducted an online survey of Class Members.

21 14. From informal discovery, Plaintiff ascertained that CMs were employed on a contract-by-
22 contract basis pursuant to standardized Contracts that started on the first day of class and ended on the
23 last day of class. Each contract provided for compensation based on the number of credit units in the
24 assigned Course ("Course Rate") and set out the number of installments over which the compensation
25 would be paid, the date of the first and last installment, and job duties that CMs were required to perform
26 before, during, and after the Contract period. The Contracts MSMU issued to CMs provided that
27 "Teaching responsibilities include syllabus and course preparation... Your syllabus should be submitted
28 to the department chair...prior to the opening of the semester and should be distributed no later than the
first day of class." The Contracts required CMs to ensure "timely submission of grades to the Registrar's
Office" after the end of the Contract. The Contract also required CMs to complete trainings during the
Contract term, including harassment prevention trainings and FERPA trainings. The Contracts also

1 provided that there was “no expectation that employment [would] be renewed after the completion of the
2 contract period.”

3 15. Plaintiff analyzed the pay data provided by Defendant and determined that from the
4 beginning of the Class Period until the end of the Fall 2020 semester, Class Members earned below the
5 monthly exemption threshold under Wage Order No. 4, § 1(A)(3)(d) during most pay periods. Starting
6 in Spring 2021, CMs’ compensation met or exceeded the per classroom hour earnings requirement under
Labor Code § 515.7.

7 16. Finally, as discussed above, Plaintiff alleged that MSMU required and/or expected Class
8 Members to work remotely throughout the Class Period, either because they were generally assigned to
9 teach online course, or because their courses were shifted to remote instruction during the COVID-19
10 pandemic. MSMU had an expense reimbursement policy that allowed CMs to submit a completed
11 expense report and receive reimbursement but Plaintiff alleged that MSMU made few or no
reimbursements pursuant to this policy.

12 **Mediation**

13 17. On February 8, 2023, the Parties participated in a mediation session with Lisa Klerman,
14 an experienced mediator who has mediated numerous wage-hour class and PAGA actions. Prior to the
15 mediation, Plaintiff submitted a detailed mediation brief supported by documents and data obtained in
16 informal discovery.

17 18. At mediation, MSMU contended that throughout the Class Period, CMs were salaried,
18 not piece-rate employees, because CMs were paid a set amount to teach each scheduled course and
19 received the full amount of pay each week regardless of the quantity or quality of the work performed
(i.e., even if the CM missed a class, or ended a class early, he or she was still paid). Indeed, the Contracts
20 provided that payments were spread evenly across all the pay periods of the semester regardless of the
21 work performed during each pay period and was not subject to reduction once the course started. MSMU
22 contended that CMs’ pay therefore lacked characteristics of a piece-rate system where employees
23 typically produced multiple units or pieces per day and can increase their pay by working harder or more
24 efficiently. Rather, it was more akin to a “salary” which is defined as a “predetermined amount that is
not subject to reduction based upon the quantity or quality of work.”

25 19. Plaintiff recognized that a court may find that the course rate is a salary because it
26 appeared that CMs did receive a predetermined amount each pay period that was not subject to change
27 within each pay period based on the number of hours CMs taught. Thus, when valuing his claims for
28 settlement, Plaintiff conceded that his piece rate claims under Labor Code §§ 226.2, 226.7 and 226(a),

1 arising during the portion of the Class Period when CMs' earnings met or exceeded the per classroom
2 hour earnings requirement under Labor Code § 515.7, would be more difficult to certify or win at trial
3 because Plaintiff would need to show that the Course Rate is a "piece-rate" and not a "salary" in order
4 to show that CMs were misclassified. However, Plaintiff's claims arising prior to Spring 2021, when
5 CMs earned less than the minimum threshold to be exempt under Wage Order 4-2001, 1(d), were better
6 suited for class certification and stronger on the merits because the Court could find that CMs were
7 misclassified whether they were "salaried" employees or not.

8 20. The parties reached an agreement in principle at mediation, and subsequently reached a
9 final agreement that is presented to the Court for approval.

10 **C. PLAINTIFF'S DAMAGES ANALYSIS**

11 21. Plaintiff calculated MSMU's maximum liability (before applying any discounts) and
12 potential realistic liability (after applying discounts) as follows:

13 **Unpaid Wages Claim – Labor Code §§ 1194 and 226.2**

14 22. Plaintiff alleged that CMs were employed on a contract-by-contract basis between
15 specific dates, as set out in their Contracts. Plaintiffs alleges that the compensation set out in the
16 Contracts ("Course Rate") therefore only covered work performed during the specified period. However,
17 Class Members were required to perform work outside of the Contract each term, including preparing
18 course syllabi prior to the Contract start date and submit final grades after the Contract end date. Plaintiff
19 alleged that whether CMs were exempt or non-exempt, MSMU was required to pay Class Members for
20 the time worked outside their Contracts.

21 23. Plaintiff also alleged that MSMU required CMs to attend mandatory training sessions and
22 faculty meetings during the Contract Period, but these tasks were not covered in the Course Rate because
23 they were non-teaching tasks, and therefore unpaid. Plaintiff alleged that even after Spring 2021, when
24 CMs' earnings met or exceeded the per classroom hour earnings requirement under Labor Code § 515.7,
25 MSMU was required to pay separately for mandatory trainings and meetings because the classroom hour
26 rates set out in § 515.7 only cover "classroom or laboratory time, preparation, grading, office hours, and
27 other course- or laboratory-related work for that course or laboratory" (see Labor Code § 515.7(b)(1))
28 but not trainings and/or meetings.

29 24. Plaintiff estimated that CMs spent on average 10 hours per course performing work
30 outside the Contract and/or attending mandatory meetings/ trainings during the Contract period. Based
31 on the data provided by Defendant, CMs taught approximately 8,070 courses during the Class Period.
32 Accordingly, Plaintiff calculated Defendant's exposure as: \$13.50 (average minimum wage) x (10 hours

1 per course) x (8,070 courses) = \$1,089,450. Interest at 10% per annum adds \$288,704 for a total of
2 \$1,378,154.

3 25. **Class Certification and Merits Discount:** Plaintiff applied a 50% discount for the risk
4 of non-certification on the theory that the Course Rate included activities performed before and after the
5 dates listed in the contract, on the theory that the activities were covered by the Contract would depend
6 on each CM's understanding of what the course rate covered, and on the theory that the amount of time
7 each CM spent on pre-Contract work, or non-teaching work performed during the Contract period, would
8 lead to individualized issues. As to the merits, Plaintiff applied a further 50% discount for the risk that
9 the Court would find that prep work is included in the Course Rate after the enactment of Labor Code §
10 515.7 which explicitly provides that "classroom hour" pay includes class preparation time; and for the
11 risk that Plaintiff's calculation of exposure is overstated because many CMs spent far less than 10 hours
12 per course performing work, especially those CMs who were teaching repeat courses. Applying the
13 certification and merits discount, for settlement purposes, MSMU's realistic exposure on the unpaid
14 wage claim is reduced to \$344,538.

15 **Wage Statements - Labor Code §§ 226(a), (e)**

16 26. In his Complaint, Plaintiff alleged that CMs, as non-exempt piece rate employees, were
17 entitled to receive accurate itemized wage statements for each pay period during which they worked, and
18 to receive wage statements that listed their hours worked, hourly rate, and piece rate information,
19 pursuant to Labor Code § 226(a) and 226.2(a). Plaintiff also alleged that MSMU failed to issue *any* wage
20 statement for work performed prior to the Contract start date. Plaintiff alleged that Defendant's practice
21 was not a result of an unintentional payroll error, or clerical mistake, but rather a result of Defendant's
22 regular compensation policies including its policy of requiring CMs to perform unpaid work prior to each
23 Contract. As such, the violation of Labor Code § 226(a) was knowing and intentional. Plaintiff also
24 alleged that CMs suffered injury pursuant to § 226(e)(2)(A) and MSMU was liable for statutory penalties.

25 27. Plaintiff calculated Defendant's liability for missing wage statements as follows:
26 according to the data provided by MSMU, CMs taught approximately 1,899 courses during the relevant
27 statutory period (January 25, 2021 to May 9, 2023). There were approximately 487 CMs employed in
28 that time-period, meaning that 487 of the violations were "initial" (\$50) violations, and the remaining
1,412 violations were "subsequent" (\$100) violations. Thus, Plaintiff calculated statutory penalties on
his missing wage statement claims as follows: $(487 \times \$50) + ((1,412 \times \$200)) = \$165,550$.

29 28. Plaintiff calculated Defendant's liability for inaccurate wage statements as follows:
Plaintiff estimates, based on the data provided by MSMU, that CMs were issued approximately 7,519

1 wage statements during the relevant statutory period (January 25, 2021 to May 9, 2023). There were
2 approximately 487 CMs employed in that time-period, meaning that 487 of the violations were “initial”
3 (\$50) violations, and the remaining 7,032 violations were “subsequent” (\$100) violations. Thus, Plaintiff
4 calculated statutory penalties as follows: $(487 \times \$50) + ((7,032 \times \$200)) = \$727,550$.

5 29. Thus, Defendant’s maximum exposure on the wage statement claim was \$893,100.

6 30. **Class Certification/ Merits Discounts on the Missing Wage Statement Claim:**
7 Plaintiff applied a nominal 10% discount for class certification on his missing wage statement claims
8 because these claims are particularly well-suited to class certification. Here, Defendant failed to issue
9 any wage statements to CMs for their work performed prior to the Contract, which was a result of
10 Defendant’s common policy and practice of requiring CMs to perform work before the start of each
11 course. This reduced Defendant’s exposure to \$148,995. Plaintiff applied a further reduction on the
12 merits for Defendant’s contention that it did not “knowingly and intentionally” fail to provide wage
13 statements for pre-Contract work because it reasonably believed that the Course Rate covered all work
14 related to teaching the Course including preparation time. Defendant also could have contended that the
15 maximum applicable statutory penalty was the initial penalty of \$50 per wage statement because Plaintiff
16 had not established that Defendant ever received notice from the Labor Commissioner or a court, and so
17 there are arguably no “subsequent” violations. Plaintiff applied a 25% discount for these risks, reducing
18 Defendant’s exposure to \$111,746.

19 31. **Class Certification/ Merits Discounts on the Inaccurate Wage Statement Claim:** As
20 discussed above, after reviewing MSMU’s payroll data and determining that CMs met or exceeded the
21 per classroom hour earnings requirement under Labor Code § 515.7 during the relevant time period
22 (January 25, 2021 to May 9, 2023), and based on MSMU’s vigorous contention that CMs’ compensation
23 was a salary and not a piece-rate, Plaintiff conceded that his Labor Code § 226(a) claims based on the
24 theory that MSMU misclassified CMs as exempt “piece-rate” workers would be difficult to certify or
25 win at trial. Accordingly, Plaintiff applied a 75% discount for the risk of losing on class certification,
26 which reduced Defendant’s exposure to \$181,877; and further 75% discount on the merits, reducing
27 Defendant’s exposure to \$45,471.

28 32. Thus, Defendant’s realistic exposure on the wage statement claim was \$157,218.

Rest Break Claim – Labor Code §§ 226.2, 226.7

33. As discussed above, Plaintiff alleges that CMs were piece-rate workers and therefore
entitled to pay hourly and separately for rest breaks under of Labor Code § 226.2. Plaintiff further alleged
that CMs were non-exempt employees and entitled to an off-duty 10-minute rest break for every 3.5

1 hours worked under Wage Order No. 4, § 12, or a premium payment equal to an hour's pay for a missed
2 rest period was required, under Labor Code § 226.7. Plaintiff alleged that MSMU had no rest break
3 policy applicable to CMs because it always classified them as exempt. Moreover, Plaintiff alleged that
4 MSMU maintained policies and/or practices that impeded CMs' ability to take off-duty rest breaks
5 because it expected and/or required CMs to be available to students for the entire scheduled class time,
6 as well as immediately before and after class for questions. Therefore, each time a CM worked 3.5 hours
or more, MSMU failed to provide a compliant, paid rest period.

7 34. Based on data provided by Defendant, Plaintiff calculated that CMs taught approximately
8 19,713 class sessions between the start of the Class Period and Fall 2020 that were 3.5 hours or longer.
9 Based on the pay data provided by Defendant, Plaintiff calculated CMs' average hourly rate as \$20.
10 Thus, Plaintiff calculated exposure on this claim is (\$20 premium pay * 19,713 rest break violations) =
\$394,260. Interest at 10% per annum adds \$59,139 for a total of \$453,399.

11 35. Based on data provided by Defendant, Plaintiff calculated that CMs taught approximately
12 15,746 class sessions between Spring 2021 and the end of the Class Period that were 3.5 hours or longer.
13 Thus, Plaintiff calculated exposure on this claim is (\$20 premium pay * 15,746 rest break violations) =
14 \$309,520. Interest at 10% per annum adds \$46,428 for a total of \$355,948.

15 36. Thus, MSMU's maximum exposure on the rest break claim was \$809,347.

16 37. **Class Certification and Merits Discounts on Rest Break Claims Prior Spring 2021:**
17 Plaintiff applied a 50% discount for the risk of non-certification on the theory that even if CMs were paid
18 on a piece-rate basis, what was included in the piece would depend on each CM's understanding of what
19 the course rate covered, and individualized issues would predominate. As to Plaintiff's claim that CMs
20 were entitled to rest breaks as non-exempt employees but the nature of CMs' employment and policies
21 and/or practices of MSMU impeded CMs from taking rest breaks, Defendant could have argued Plaintiff
22 would be unable to certify a class because individualized issues would predominate as to why some CMs
23 took rest breaks while others did not. This reduced Defendant's liability to \$226,699. As to the merits,
24 Defendant contended Plaintiff would lose because CMs could have taken rest breaks if they wanted to,
and any missed breaks were the CMs own choice. Plaintiff applied a 50% discount based on these
arguments, which reduced MSMU's exposure to \$113,349.

25 38. **Class Certification and Merits Discounts on Rest Break Claims After to Spring 2021:**
26 As discussed above, after reviewing MSMU's payroll data and determining that CMs' earnings met or
27 exceeded the per classroom hour earnings requirement under Labor Code § 515.7 from Spring 2021 on,
28 and after considering Defendant's contention that the Course Rate was a "salary" and not a "piece-rate",

1 Plaintiff conceded that his Labor Code § 226.7 claims based on the theory that MSMU misclassified
2 CMs as exempt because they were “piece-rate” workers would be more difficult to certify and win at
3 trial. Accordingly, Plaintiff applied a 75% discount for the risk of losing on class certification, which
4 reduced Defendant’s exposure to \$88,997; and further 75% discount on the merits, reducing Defendant’s
5 exposure to \$22,246.

6 39. Thus, Defendant’s realistic exposure on the rest break claim was \$135,596.

7 **Waiting Time Penalties – Labor Code §§ 201-203**

8 40. Plaintiff alleged that, throughout the relevant time period (January 25, 2019 to May 9,
9 2023), CMs were discharged on completion of each Contract, yet were not issued final paycheck until
10 after the end of the Contract because MSMU followed its regular payroll practices of paying CMs on the
11 20th of each month. Plaintiff alleged that CMs were entitled to waiting time penalties under Labor Code
12 § 203 for each Contract.

13 41. Based on pay data provided by MSMU, Plaintiff calculated that there was a total of 45,020
14 days between the end of all Contracts and the next pay date during the relevant time period. Plaintiff
15 calculated CMs’ average daily rate as \$59.80 by multiplying the average number of hours CMs worked
per day in each Course (2.99) by CMs’ average hourly rate (\$20). Accordingly, Plaintiff calculated that
waiting time penalties as $(\$59.80 * 45,020) = \$2,692,196$.

16 42. **Class Certification Discount:** Plaintiff applied a 50% discount for Defendant’s
17 contention that the claim would not be certified because many CMs knew they would teach for
18 consecutive terms or in the same term each year, e.g., every Spring or every Fall. Defendant could have
19 also argued that the claim would not be certified because CMs did not expect to be paid at the end of the
20 contract, but rather according to the regular payroll schedule, and the different experiences and
21 expectations of CMs would also lead to individualized issues and make class certification difficult or
impossible. This reduced MSMU’s exposure on the waiting time penalties claim to \$1,346,098.

22 43. **Merits Discount:** Plaintiff applied a further 50% discount on the merits for the arguments
23 that there was no “discharge” at the end of each contract under because the majority of CMs returned to
24 teach the same or similar classes each term and because CMs did not have to reapply to teach at MSMU
25 each time they were assigned a course; and that MSMU had a good faith dispute that there was not a
26 discharge and/or no wages were due, which could negate the willfulness requirement of Labor Code §
203. This reduced MSMU’s exposure on the waiting time penalties claim to \$673,049.

1 **Unreimbursed Expenses Claim - Labor Code § 2802**

2 44. Plaintiff alleged that MSMU required CMs who taught online courses to do so remotely.
3 Staring in March 2020, MSMU closed its campuses and shifted all courses online. CMs were required
4 to work remotely and to use their home internet and personal cell phones in order to perform their job
5 duties for MSMU. Plaintiff alleged that MSMU's expense reimbursement policy provided that CMs
6 could obtain preapproval for their expenses and submit requests for reimbursement but Plaintiff alleges
7 that such a policy requiring that CMs request reimbursement was not compliant with Labor Code § 2802
and that in practice no CMs received reimbursement for their remote work expenses.

8 45. According to course data provided by Defendant, approximately 1,842 courses were
9 remote or hybrid. Courses were, on average, 3.5 months long, and Plaintiff estimated that CMs incurred
10 approximately \$100 per month in remote work expenses. Plaintiff calculated MSMU's liability for
11 unreimbursed expenses of $(1,842 \text{ courses} \times 3.5 \text{ month per course} \times \$100) = \$645,750$. Interest at 10%
adds \$171,123 for a total of \$816,873.

12 46. **Class Certification and Merits Discount:** Plaintiff applied a 50% discount for class
13 certification based on the fact that there were varying practices with regard to expenses incurred by CMs,
14 whether those expenses were reasonable, whether CMs requested reimbursement pursuant to MSMU's
15 policies, and whether MSMU approved the request, which would all lead to individualized issues. This
16 reduced MSMU's liability to \$408,436. As to the merits, Plaintiff applied a further 50% discount based
17 on the risk that the assumption that \$100 per month as "reasonable" estimate of unreimbursed expenses
18 was inflated given the part-time nature of CMs' employment, a much smaller percentage of their home
19 office expenses should be reimbursed, that some of the expenses claimed were not necessary, and that
CMs could request reimbursement if they wanted to. This reduced realistic damages to **\$204,218**.

20 **MSMU's Maximum and Realistic Exposure**

21 47. Plaintiff calculated MSMU's maximum exposure (including interest but excluding
22 PAGA) as \$6,589,671, and its realistic exposure as \$1,514,620. A summary of the maximum and realistic
23 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 (§ 226.7)	\$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

48. The Gross Settlement represents 17% of MSMU's maximum exposure; and 73% of its realistic exposure. According to data provided by Defendant, the Class worked approximately 16,983 monthly pay periods during the Class Period. The value of each pay period is \$65.36 gross³ and \$37.77 net.⁴ The average recovery per CM will be \$1,321.43 gross⁵ and \$763.69 net⁶ and the highest recovery will be approximately \$2,402.37.⁷

49. Given the substantial relief obtained for the Class, and the certainty of receiving a settlement payment now rather than years of uncertainty, the Settlement clearly meets the criteria for preliminary approval. If the parties continued to litigate this case, Plaintiff would have to clear hurdles including a motion for class certification. Whichever claims cleared that hurdle would face trial. Regardless of the outcome at trial, the losing party would likely appeal. This process would take years to resolve. Instead, this settlement provides a resolution of a dispute, and CMs will recover in the relatively near future if the settlement is finally approved.

PAGA Allocation is Fair and Reasonable

50. Plaintiff estimated that CMs received approximately 8,009 pay periods during the PAGA Period. Using a penalty of \$100 per pay period (because Defendant never received notice from the Labor Commissioner or a court so there are arguably no "subsequent" violations) Defendant's maximum exposure in PAGA Penalties is **\$800,900** (assuming the Court would not allow "stacking" of PAGA penalties for each separate Labor Code violations). The \$30,000 allocated to PAGA penalties represents approximately 4% of Defendant's exposure to PAGA penalties, which is fair and reasonable for several reasons.

51. First, Defendant could have contended that Plaintiff's claims for PAGA Penalties would fail for the same reasons as the underlying Labor Code claims.

³ \$1,110,000 / 16,983 pay periods

⁴ \$641,500/ 16,983 pay checks. The NSA is approximately \$641,500 after deducting fees (\$388,500), costs (\$25,000), PAGA payment (\$30,000), service award (\$10,000), and administration costs (\$15,000)

⁵ \$1,110,000 / 840 Class Members

⁶ \$641,500/ 840 Class Members

⁷ 63-month Class Period * \$37.77 net per month

1 52. Second, the Court could reduce any award of PAGA penalties as “unjust, arbitrary and
2 oppressive, or confiscatory” under Labor Code § 2699(i) because MSMU operated in good faith and
3 reasonably believed it was in compliance with the Labor Code.

4 53. Third, although class certification requirements do not apply to PAGA claims, such claims
5 can be stricken if they are found to be unmanageable, and because only CMs who actually incurred
6 unpaid wages, were missing wage statements, or incurred unreimbursed expenses during a particular pay
7 period could recover PAGA penalties for those violations, Defendant could have disputed that there is a
 manageable way to determine who was entitled to such penalties.

8 54. Fourth, the overall settlement resulted in robust relief for the Class of \$1,321.43 gross and
9 \$763.69 net, which is what courts look at when assessing amount attributed to PAGA penalties.

10 55. Finally, the parties’ allocation of 4% of the maximum value of PAGA Penalties is
11 comparable to (or higher than) PAGA allocations in similar cases that received approval from California
12 Superior Courts including *Carr et al v Konica Minolta Business Solutions U.S.A., Inc.*, Case No.
13 21CV001245 (Alameda County Superior Court) (June 27, 2023)(finally approving \$30,000 allocated to
14 PAGA penalties representing 2% of Defendant’s total exposure to PAGA penalties of \$1,318,800);
15 *Harris v. Southern New Hampshire University*, Case No. RG21109745 (Alameda County Superior
16 Court, May 17, 2023)(finally approving \$30,000 allocated to PAGA penalties representing 2% of
17 Defendant’s total exposure to PAGA penalties of \$ \$1,568,300); *Castillo v Holy Names University*, Case
18 No. HG21097245 (Alameda County Superior Court) (May 2, 2023) (finally approving \$30,000 allocated
19 to PAGA penalties representing 2% of Defendant’s total exposure to PAGA penalties of \$ \$1,525,600);
20 *Marantz v Laguna College of Arts & Design*, Case No. 30-2021-01194814-CU-OE-CXC (Orange
21 County Superior Court) (April 21, 2023) (finally approving \$20,000 allocated to PAGA penalties
22 representing 2% of Defendant’s total exposure to PAGA penalties of \$804,700); *Glor v iHeart Media +*
23 *Entertainment*, Case No. 22CV005286 (Alameda County Superior Court) (February 14, 2023) (finally
24 approving \$30,000 allocated to PAGA penalties representing 1.8% of Defendant’s total exposure to
25 PAGA penalties of \$1,659,300); *Burleigh v. Brandman University*, Case No. 30-2020-01172801-CU-
26 OE-CXC (Orange County Superior Court) (January 27, 2023) (finally approving \$35,000 allocated to
27 PAGA penalties representing 1.7% of Defendant’s total exposure to PAGA penalties of \$2,024,233);
28 *Sweetland-Gil v University of the Pacific*, Case No. STK-CV-UOE-2019-0014682 (San Joaquin County
 Superior Court) (March 4, 2022) (finally approving \$30,000 allocated to PAGA penalties representing
 1.6% of Defendant’s total exposure to PAGA penalties of \$1,517,700); *Pillow et al. v. Pepperdine*
 University, Case No. 19STCV33162 (Los Angeles Superior Court)(July 28, 2021) (finally approving

1 PAGA allocation of \$15,000, representing 1% of the maximum \$1,619,200 in PAGA penalties); *Moore*
2 *et al v Notre Dame De Namur University*, Case No. 19-CIV-04765 (San Mateo County Superior Court)
3 (July 1, 2021) (finally approving PAGA allocation in the amount of \$12,000, representing 1.9% of the
4 maximum \$631,300 in PAGA penalties); *Mooiman et al. v Saint Mary's College of California*, Case No.
5 C19-02092 (Contra Costa County Superior Court) (June 10, 2021) (finally approving \$30,000 PAGA
6 allocation representing 1% of the maximum \$649,200 in PAGA penalties, and explaining that "the record
7 indicates that defendant changed many of the policies at issue before the action was brought, that there
8 is a substantial monetary award which in part serves the deterrent function of a penalty, and that
9 defendant had some arguments of "good faith," that would mitigate penalties"); and *Harris-Foster v.*
10 *University of Phoenix*, Case No. RG19019028 (Alameda County Superior Court) (March 17, 2021)
11 (finally approving \$50,000 PAGA allocation, representing 1.5% of maximum \$3,173,200 in PAGA
12 penalties). .

12 II. ATTORNEYS' FEES AND COSTS

13 56. The Settlement Agreement provides that Defendant will not oppose a request for
14 attorney's fees of up to 35% of the Gross Settlement (i.e., \$388,500). This is fair, reasonable and adequate
15 to compensate Class Counsel for the substantial work they have already done to prosecute this Action,
16 the risk they assumed to agree to take the case in the first place, the great expense spared by Class Counsel
17 having achieved a successful resolution early on in the case, and the continued time and expense that
18 Class Counsel will incur by administering the fair distribution of the settlement fund should this Court
19 grant the settlement's approval.

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

27 58. Our firm has spent significant time litigating this case, including interviewing the named
28 Plaintiff, conducting a survey of putative Class Members, reviewing documents provided by Plaintiff
prior to and after case initiation, reviewing information obtained by our firm through our own research,
filing a detailed complaint, engaging in extensive informal discovery, analyzing voluminous data
produced by MSMU, drafting a detailed mediation brief, attending a full-day mediation, negotiating the

1 settlement, drafting the preliminary approval papers; and planning and strategizing throughout the case.
2 Further, we will spend many additional hours obtaining preliminary approval; overseeing the notice
3 process; answering calls and questions from Class Members; preparing the final approval papers;
4 attending the final approval hearing; and overseeing the distribution of the settlement funds.

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

10 60. If the Court grants Preliminary Approval and sets a final approval hearing date, Class
11 Counsel will submit their lodestar and costs breakdown with their motion for attorneys' fees and costs,
12 which will be noticed to be heard at the same time as the final approval motion.

13 I declare under penalty of perjury under the laws of the United States and the State of California
14 that the foregoing is true and correct. Executed on July 7, 2023.

15 s/ Julian Hammond
16 Julian Hammond
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EXHIBIT 1

HAMMONDLAW

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

FACSIMILE: 310-295-2385

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

TELEPHONE: 310-601-6766

January 10, 2022

VIA LWDA WEBSITE

Labor & Workforce Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

VIA CERTIFIED MAIL

Ann McElaney-Johnson
Chief Executive Officer
Mount Saint Mary's University
12001 Chalon Road
Los Angeles, CA 90049

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

Dear Ms. McElaney-Johnson,

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

We represent Cadyn Cathers ("Plaintiff"), a former part-time adjunct instructor,¹ in connection with her representative claims against Mount Saint Mary's University ("Defendant" or "MSMU") on behalf of herself and all other part-time adjunct instructors employed by MSMU in California ("Aggrieved Employees") from October 26, 2020² through to trial of this matter ("PAGA Period") for the following Labor Code violations:

¹ Plaintiff was employed by MSMU as a part-time adjunct instructor from August 2016 through to the end of 2021.

² On May 29, 2020, in response to COVID-19, the Judicial Council of California adopted Emergency Rule 9, under which the statutes of limitations "for civil causes of action that exceed 180 days [were] tolled from April 6, 2020, until October 1, 2020." As such, for any claims that were accruing throughout this tolling period, the statute of limitations is extended by 178 days. Thus, the correct PAGA Period for Aggrieved Employees' claims is one year and 178 days from the postmark date of this notice, less the number of days that elapsed from October 1, 2020 to one year prior to the post mark date of this notice (i.e. January 10, 2021) when the tolling period was no longer in effect (i.e. 101 days), through to trial in this matter. Thus, the correct PAGA Period is from October 26, 2020 through to trial.

- (a) failure to pay for all hours worked in violation of Labor Code §§ 1194, 1194.2, 1197.1(a), 226.2, and IWC Wage Order No. 4-2001, § 4;
- (b) failure to permit and authorize off-duty rest breaks or pay missed rest break premium pay in violation of Labor Code §§ 226.7, 226.2 and IWC Wage Order No. 4-2001, §§ 4, 12;
- (c) failure to pay wages timely in violation of Labor Code § 204;
- (d) failure to issue accurate itemized wage statements in violation of Labor Code § 226(a) and 226.2(a);
- (e) failure to issue wage statements in violation of Labor Code § 226(a); and
- (f) failure to pay compensation due upon discharge from employment in violation of Labor Code §§ 201-203.

Plaintiff also brings her representative claims on behalf of herself and all other individuals, including but not limited adjunct instructors, employed by MSMU in California (“Expense Reimbursement Aggrieved Employees” or “ER Aggrieved Employees”) during the PAGA Period.

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

Aggrieved Employees Are Non-Exempt

Aggrieved Employees are non-exempt and were non-exempt throughout the PAGA Period because they do not meet the requirements of IWC Wage Order No. 4-2001 or Labor Code § 515.7.

IWC Wage Order No. 4-2001, § 1(A) provides certain exemptions including executive, administrative, or professional exemptions. Under IWC Wage Order No. 4-2001, § 1(A)(3)(d), the professional exemption applies only if the employees earn “a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment” as is defined in Labor Code § 515(c) as 40 hours per week (“minimum earnings requirement”). Thus, to be exempt under the Wage Order, part-time adjunct instructors must meet two requirements: they must be paid on a salary basis, and their salary must be at least two times the state minimum wage for full time employment.

Under Labor Code § 515.7, effective September 9, 2020 adjunct instructors employed at private non-profit universities are classified as exempt from the enumerated Labor Code requirements (Labor Code §§ 226(a)(2), (a)(3), (a)(9), and 510, 512) if they are paid on a salary basis that is either (1) “[a] monthly salary equivalent to no less than two times the state minimum wage for employment in which the employee is employed for at least 40 hours per week” or (2) a calculated based on minimum per classroom hour amount set out in § 515.7(b). Thus, in order to be exempt under Labor Code § 515.7 part-time adjunct instructors must meet two requirements:

they must be paid on a salary basis, and that salary has to meet one of the minimum requirements.³

Aggrieved Employees do not fall within the exemption criteria under Labor Code § 515.7 for two separate reasons. First, Aggrieved Employees are paid on a piece rate basis and not a salary as required under Labor Code § 515.7(a)(2). Their pay is not a salary but a piece-rate because Defendant pays them a flat amount per course taught or per assignment (e.g. advising). The more courses Aggrieved Employees teach or the more assignments they complete, the more they are paid. This type of compensation is a form of piece-rate compensation.

The DLSE defines “piece-rate” broadly, as “[w]ork paid for according to the number of units turned out. Consequently, a piece rate must be based upon an ascertainable figure paid for completing a particular task or making a particular piece of goods.”⁴ True to the piece-rate definition in the DLSE Manual, a 2014 report from the U.S. House of Representatives Committee on Education and the Workforce Democratic Staff, discussing poor working conditions of adjunct instructors, characterizes adjunct instructors’ pay based on the number of courses taught as a piece-rate. The report states: “Generally, adjunct work is piece work. These contingent faculty usually are paid a piece rate, a fixed amount of compensation for each unit produced, regardless of how much time it takes to produce. In this case, the unit of production is a college course.”⁵ This is how Defendant paid Aggrieved Employees – an ascertainable/fixed amount per “course” or “assignment.”

Second, Aggrieved Employees’ pay is less than the minimum per classroom hour pay required under § 515.7(b).

Aggrieved Employees were also non-exempt under Wage Order No. 4-2001 as they are paid on a piece-rate basis. Additionally, Plaintiff and other Aggrieved Employees were non-exempt because their pay did not meet the minimum monthly salary threshold of two times the state minimum wage for full time employment.

Unpaid Wage Claim – Labor Code §§ 1194, 1194.2, 1197.1(a), 226.2, and Wage Order No. 4-2001, § 4

³ If part-time adjunct instructors are employed for at least 40 hours per week, they are also exempt if they earn two times the state minimum wage. Lab. Code § 515.7(a)(2)(A).

⁴ DLSE Enforcement and Interpretation Manual, § 2.5.1. Noting the diversity of the nature of piece-rate plans, the DLSE provides a non-exclusive list of examples, including automobile mechanics paid on a “book rate,” nurses paid on the basis of the number of procedures performed, a carpet layer paid based on the number of yards of carpet laid, a technician paid by the number of telephones installed, a factory worker paid by the widget completed, and a carpenter paid by the linear foot on framing job. DLSE Manual § 2.5.2.

⁵ “The Just-In-Time Professor” is available here: <https://edlabor.house.gov/download/the-just-in-time-professor>.

Labor Code § 1194(a) provides that “[n]otwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Labor Code § 1197.1(a) provides, in relevant part, that “[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission, shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...”

IWC Wage Order No. 4-2001, § 4 also requires that “[e]very employer ...pay to each employee wage not less than” the applicable minimum wage.

Labor Code § 226.2(a)(1) requires employers to compensate piece-rate workers “for rest and recovery periods . . . separate from any piece-rate compensation.”

Labor Code § 515.7 allows private non-profit California universities to classify their part-time adjunct instructors as exempt provided that they are paid a salary which is calculated using the minimum per classroom hours rates set out in the statute.

Plaintiff maintains three separate theories of how Defendant violated Labor Code §§ 1194, 1197.1 and IWC Wage Order No. 4-2001, § 4.

The first theory is as follows. Whether Aggrieved Employees are exempt or non-exempt and piece-rate or salaried, they were entitled to be paid at least at the minimum wage for each hour worked pursuant to §§ 1194, 1197.1, and IWC Wage Order No. 4-2001, § 4. However, Defendant does not pay them for the course preparation work performed prior to the beginning of their contracts. Aggrieved Employees are employed pursuant to uniform employment contracts that set out the beginning and end dates of their assignment, which correspond to the first and last day of classes on the academic calendar, the amount paid for the assignment, and the number of monthly installments over which their compensation would be paid. Defendant requires Aggrieved Employees to prepare course materials and syllabi and to submit syllabi before the opening of the semester, and thus before the “begin date” of their contracts. As a result, the compensation under the contract does not cover course preparation work as it is performed outside the contract and Aggrieved Employees are not compensated separately from the course pay for that work.

The second theory is as follows. Even if Aggrieved employees are exempt by virtue of Labor Code § 515.7, Defendant still failed to pay them wage for all hours worked. That is so because a salary calculated using the minimum per classroom hour rates set out in § 515.7 only covers “all classroom or laboratory time, preparation, grading, office hours, and other course- or laboratory-related work for that course or laboratory” (Lab. Code § 515.7(b)(1)). Defendant,

however, requires and/or expects Aggrieved Employees to complete certain tasks in addition to teaching, including trainings e.g. FERPA, sexual harassment training, and attend faculty meetings. Defendant does not pay Aggrieved Employees for these activities in violation of Labor Code §§ 1194, 1197.1 and Wage Order No. 4, § 4.

The third theory is based on the premise that Aggrieved Employees' compensation is a piece-rate. If Aggrieved Employee are piece-rate workers, which Plaintiff asserts they are, then pursuant to Labor Code § 226.2, Defendant was required to pay separately from the piece and hourly for the time spent on rest breaks, which is counted as hours worked. *See* IWC Wage Order No. 4-2001, § 12(A) ("Authorized rest period time shall be counted as hours worked). However, Defendant does not pay Aggrieved Employees separately from the course pay, or at all, for rest break time and therefore violates Labor Code §§ 226.2, 1194, 1197.1 and Wage Order No. 4, § 4.

As a result, pursuant to Labor Code § 2699(f), Plaintiff and Aggrieved Employees are entitled to one hundred dollars (\$100) per employee per pay period for each initial violation and two hundred fifty dollars (\$250) per employee per pay period for each subsequent violation, in accordance with Labor Code § 1197.1(a)(1)-(2). Alternatively, Plaintiff and Aggrieved Employees are entitled to the default PAGA penalty under Labor Code § 2699(f)(2) of one hundred dollars (\$100) per employee per pay period for each initial violation and two hundred dollars (\$200) per employee per pay period for each subsequent violation. All penalties sought for Aggrieved Employees herein are sought on the basis of two pay periods per month for the reasons set forth below.

Rest Break Claim – Labor Code §§ 226.7, 226.2 and Wage Order No. 4, §§ 4, 12

Labor Code § 226.7 and IWC Wage Order No. 4-2001, § 12 requires employers to authorize and permit non-exempt employees to take a 10-minute rest break for every four hours or major fraction thereof worked. Labor Code § 226.2 also requires employers to pay piece-rate employees separately from the piece and hourly for rest break time. Thus, an employer is required to provide its piece-rate employees with rest breaks that are both off-duty and paid. If an employer fails to provide a compliant rest break, the employer must pay an employee one hour of pay at the employee's regular rate of compensation ("premium pay") for each workday that a rest period is not provided. *See* Lab. Code § 226.7; IWC Wage Order No. 4-2001, §12(B).

Even if an employee is exempt under Labor Code § 515.7, s/he is only exempt from "paragraphs (2), (3), and (9) of subdivision (a) of Section 226, and Sections 510 and 512" (see Lab. Code § 515.7(a)), and is not exempt from Labor Code § 226.7 or IWC Wage Order No. 4-2001, § 12.

Plaintiff maintains two theories of how Defendant committed rest break violations. First, throughout the PAGA Period, Aggrieved Employees routinely worked 3.5 hours or more continuously on any given day, because MSMU scheduled them to teach 3.5 or more and/or even when scheduled to teach 3 hours they were required and/or expected to maintain office hours and to be generally available to students for questions, including immediately before and after their

classes. If Aggrieved Employees are piece-rate workers, pursuant to Labor Code §§ 226.2, 226.7 and Wage Order No. 4, §§ 4, 12, Defendant was required, but failed, to pay them for their time spent on rest breaks separately and hourly apart from the course pay, nor did Defendant pay them premium pay for missed rest breaks.

Second, even if Aggrieved Employees were not considered piece-rate workers, as non-exempt employee under the Wage Order (even if exempt under Labor Code § 515.7), Defendant was required to authorize and permit them to take off-duty rest breaks. However, Defendant failed to authorize and permit Aggrieved Employees to take compliant rest breaks because Defendant impeded their ability to take rest breaks by maintaining policies and/or practices of requiring and/or expecting Aggrieved Employees to be reasonably available to students outside class for consultations and assistance as needed. Additionally, the nature of Aggrieved Employees' job duties is such that students routinely approach during classroom breaks and Aggrieved Employees cannot ignore them. Defendant also did not pay premium pay for missed/unpaid rest breaks, in violation of Labor Code § 226.7 and IWC Wage Order No. 4-2001, § 12.

As a result of Defendants' rest break violations throughout the PAGA Period, Plaintiff and Aggrieved Employees are entitled to one hundred dollars (\$100) per employee per pay period for each initial violation and two hundred dollars (\$200) per employee per pay period for each subsequent violation, pursuant to Labor Code § 2699(f)(2).

Failure to Pay Wages Twice Monthly - Labor Code § 204(a)

Labor Code § 204(a) requires wages to be paid "twice during each calendar month" with "[l]abor performed between the 1st and 15th days, inclusive, of any calendar month ... paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, ...paid for between the 1st and 10th day of the following month." Labor Code § 204(a) permits salaries of employees exempt under the Fair Labor Standards Act to be paid "once a month on or before the 26th day of the month during which the labor was performed if the entire month's salaries, including the unearned portion between the date of payment and the last day of the month, are paid at that time."

Throughout the PAGA Period, Defendant paid Aggrieved Employees only once per month. Such payment was made on or about the 19th or the 20th of the month following the month in which work was performed. For example, all work performed in August would be compensated in a single payment on or about September 19 or 20. This is a violation of Labor Code § 204(a). The limited exceptions set out in section 204(a) does not apply here for two independent reasons: (a) Aggrieved Employees were not paid on a salary basis, and (b) Aggrieved Employees were not paid by the 26th of a given month for all work performed in that month.

Therefore, Defendant was required to pay wages and provide compliant wage statements twice each month. All penalties sought for Aggrieved Employees herein will be sought on the

basis of two pay periods per month, given that Defendant was required to pay semimonthly. In addition, in connection with Aggrieved Employees' Labor § 226(a) claims, above, penalties are owed because Defendant failed to provide any wage statements for half of such pay periods.

As a result, pursuant to Labor Code § 2699(f), Plaintiff and Aggrieved Employees are entitled to two hundred fifty dollars (\$250) per employee per initial violation, and one thousand dollars (\$1,000) per employee per subsequent violation, in accordance with Labor Code § 226.3. Alternatively, Plaintiff and Aggrieved Employees are entitled to the default PAGA penalty under Labor Code § 2699(f)(2) of one hundred dollars (\$100) per employee per pay period for each initial violation and two hundred dollars (\$200) per employee per pay period for each subsequent violation.

Unlawful Wage Statement - Labor Code § 226(a)

Labor Code § 226(a) requires "an employer, semimonthly or at the time of each payment of wages" to provide non-exempt employees with accurate itemized wage statements listing their total hours worked, applicable hourly rates and corresponding number of hours worked at each rate. *See* Lab. Code §§ 226(a)(2), (a)(9).

Additionally, Labor Code §§ 226(a)(3) and 226.2(a)(2) require employers of piece-rate workers, to furnish their employees with wage statements that include the number of piece-rate units earned and any applicable piece rate, and under Labor Code § 226.2(a) to furnish with wage statements that itemized the total hours of compensable rest and recovery periods, and the rate of compensation.

As non-exempt employees, Aggrieved Employees were entitled to receive wage statements that included entries for their total hours worked and applicable hourly rates during each pay period. However, Defendant violated Labor Code § 226(a)(2) and (a)(9) because the wage statements it provided to the Aggrieved Employees only included a lump sum payments of each installment without breaking down hours worked, hourly rates, corresponding number of hours worked at each hourly rate. Aggrieved Employees' wage statements included the headings "rate" and "salary/hours," but under these headings Defendant left blanks. Indeed, Defendant did not track Aggrieved Employees' hours worked and as a result could not list their actual hours worked.

As piece-rate workers, Aggrieved Employees were also entitled to receive wage statements that included entries for the number of pieces earned and the piece rate paid. However, Defendant also violated Labor Code §§ 226(a)(3) and 226.2(a)(2) because it did not include any of this required information on the wage statements issued to Aggrieved Employees.

Therefore, throughout the PAGA Period, Defendant failed to issue accurate itemized wage statements, in violation of Labor Code §§ 226(a) and 226.2(a).

As a result, pursuant to Labor Code § 2699(f), Plaintiff and Aggrieved Employees are entitled to two hundred fifty dollars (\$250) per employee per initial violation, and one thousand

dollars (\$1,000) per employee per subsequent violation, in accordance with Labor Code § 226.3. Alternatively, Plaintiff and Aggrieved Employees are entitled to the default PAGA penalty under Labor Code § 2699(f)(2) of one hundred dollars (\$100) per employee per pay period for each initial violation and two hundred dollars (\$200) per employee per pay period for each subsequent violation.

Failure to Issue Wage Statements – Labor Code § 226(a)

As stated above, Labor Code § 226(a) requires an employer to issue itemized wage statements semimonthly or at the time of each payment of wages. In addition to failing to issue accurate itemized wage statements each time it did issue wage statements, Defendant also failed to issue *any* wage statements for the pay period immediately preceding the beginning date of each contract during which time Aggrieved Employees worked to prepare course materials including syllabi.

As a result, pursuant to Labor Code § 2699(f), Plaintiff and Aggrieved Employees are entitled to two hundred fifty dollars (\$250) per employee per initial violation, and one thousand dollars (\$1,000) per employee per subsequent violation, in accordance with Labor Code § 226.3.

Failure to Pay Wages Owed at Termination - Labor Code §§ 201-202

Labor Code § 201 provides that “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202 provides that “an employee not having a written contract for a definite period quits his or her employment his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting...”

As a consequence of Defendant’s failure to pay wages owed for all hours worked, premium pay for unpaid or missed rest, Aggrieved Employees did not receive all compensation due to them when their employment terminated. This violated Labor Code Sections 201 and 202 with respect to Aggrieved Employees.

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

Failure to Reimbursed Business Expenses - Labor Code § 2802

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

In or about mid-March 2020, MSMU directed all staff and faculty, other than essential employees, to work from home. All classes, exams, labs and clinicals were transferred online and

non-essential operations were carried out by employees remotely. This directive continued through 2020, and for much of 2021 for many of MSMU's staff and faculty. In carrying out their work duties from home, ER Aggrieved Employees incurred necessary expenses and/or losses in the direct consequence of the discharge of their duties. These expenses and/or losses include, but are not limited to home internet and cellular phone charges, software, ink toner/cartridge and paper, and other expenses associated with working from home ("Home Office Expenses"). MSMU knew that ER Aggrieved Employees incurred these expenses. For example, MSMU required Aggrieved Employees to conduct class sessions remotely which require an internet connection. Other ER Aggrieved Employees (i.e. all other employees of MSMU, including full time faculty and staff) also could not carry out their job duties remotely from home without the use of home internet, phone, software, and other office supplies listed above and thus necessarily incurred Home Office Expenses in carrying out their job duties remotely, which MSMU also knew. However, throughout the PAGA Period Defendant did not reimburse ER Aggrieved Employees for these necessary business expenses, in violation of Labor Code § 2802.

Plaintiff and ER Aggrieved Employees are entitled to hundred dollars (\$100) per employee per pay period for each initial violation and two hundred dollars (\$200) per employee per pay period for each subsequent violation, pursuant to Labor Code § 2699(f)(2).

CONCLUSION

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

Yours truly,

Julian Hammond