

04/18/2024

David W. Slayton, Executive Officer / Clerk of Court

**Final Approval of Class Action Settlement
Department SSC-9**

By: R. Arraiga Deputy

Vikram Peters v. Life Pacific University

Case No.: 22STCV06988

Hearing: April 18, 2024

**FINAL RULING RE: MOTION FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

The Parties' Motion for Final Approval of Class Action Settlement is **GRANTED** as the settlement is fair, adequate, and reasonable.

The essential terms are:

- A. The Gross Settlement Amount ("GSA") is **\$138,000**, non-reversionary. (§3.1)
- B. The Net Settlement Amount is the GSA minus the following:
 - o **\$46,000** (1/3) for attorney fees to Class Counsel (§3.2.2);
 - o **\$15,106.42** for litigation costs to Class Counsel (*Ibid.*);
 - o **\$5,000** incentive award to the Named Plaintiff (§3.2.1);
 - o **\$7,000** for settlement administration costs (§3.2.3); and
 - o **\$7,500** (75% of \$10,000 PAGA penalty) to the LWDA. (§3.2.5)
- C. Employer's share of the payroll taxes on the taxable portion of the settlement payments shall be paid separately from the GSA by Defendant. (§3.1)
- D. Plaintiffs' release of Defendants from claims described herein.

By **June 18, 2024**, Class Counsel must give notice to the class members pursuant to California Rules of Court, rule 3.771(b) and to the LWDA, if applicable, pursuant to Labor Code §2699 (1)(3).

By **April 21, 2025**, Class Counsel must file a Final Report Re: Distribution of the Settlement Funds.

The Court hereby sets a **Non-Appearence Case Review for April 28, 2025, 8:30 a.m., Department 9.**

BACKGROUND

This is a wage and hour class action. On February 24, 2022, Plaintiff commenced this Class Action by filing a Complaint alleging causes of action against LPU for Failure to Pay Wages for All Hours Worked (Cal. Labor Code §§ 226.2, 1194, 1194.2 and IWC Wage Order No. 4-2001, § 4), Failure to Authorize and Permit Paid Rest Breaks and Pay Premium Pay (Cal. Labor Code §§ 226.2, 226.7, IWC Wage Order No. 4-2001, §§ 4, 12), Failure to Pay all Wages upon Discharge (Cal. Labor Code §§201-203), Failure to Reimburse for Necessarily Incurred Business Expenses (Cal. Labor Code § 2802), and Unfair, Unlawful, or Fraudulent Business Practices (Cal. Bus. & Prof. Code § 17200 et seq.). On February 15, 2023 Plaintiff filed a First Amended Complaint seeking PAGA Penalties.

Counsel represents that Defendant produced relevant data and documents including class sizes; course data including (a) the title of each course taught by Adjuncts during the Adjunct Class Period, (b) number of credits, (c) type of course (i.e., in person or online), (d) academic term in which the course was taught, (e) day(s) of the week classes were held, and (f) start time and end time of each class; faculty handbooks; job descriptions; COVID-19 telecommuting guidelines; and Plaintiff's personnel file.

On September 22, 2022, the Parties participated in an all-day mediation presided over by Lisa Klerman, Esq., and were able to come to an agreement. A fully executed copy of the Settlement Agreement was filed with the Court on March 14, 2023 attached to the Declaration Jullian Hammond ("Hammond Decl.") ISO Preliminary Approval, as Exhibit 1.

The Court granted Preliminary Approval on December 15, 2023. Notice was given to the Class Members as ordered. (See Declaration of Mary Butler ("Butler Decl."); Supplemental Declaration of Mary Butler ("Butler Supp. Decl.")).

Now before the Court is the motion for final approval of the settlement agreement.

CLASS DEFINITION AND ESSENTIAL TERMS OF SETTLEMENT AGREEMENT

The essential terms are as follows:

- "Class" refers collectively to "Adjunct Class" and "Reimbursement Class". (Settlement Agreement, ¶1.5.)
 - "Adjunct Class" and "Adjunct Class Member" means all current or former employees in California who performed the duties of an Adjunct Faculty for LPU during the Adjunct Class Period. Defining which duties constitute duties of an Adjunct Faculty is in the discretion of LPU. Adjunct Class Member specifically excludes any full-time faculty employees that performed the duties of an Adjunct Faculty. (¶1.5.1)
 - "Adjunct Class Period" means the period from February 24, 2018 through to December 31, 2019. (¶1.12.1)
 - "Reimbursement Class" and "Reimbursement Class Member" means all current or former LPU employees in California who worked remotely during the Reimbursement Class Period. (¶1.5.2)

- “Reimbursement Class Period” means the period from March 16, 2020 through to June 30, 2021. (§1.1.22)
- “Aggrieved Employee” refers collectively to “Aggrieved Adjunct Employees” and “Aggrieved Reimbursement Employees”. (§1.4)
 - “Aggrieved Adjunct Employees” means all current or former employees in California who performed the duties of an Adjunct Faculty for LPU from February 24, 2018 through to December 31, 2019. (§1.4.1)
 - “Adjunct PAGA Settlement Period” means February 23, 2018 through the date of preliminary approval of the settlement. (§1.31.1)
 - “Aggrieved Reimbursement Employee” means all current or former LPU employees in California who worked remotely from March 16, 2020 and June 30, 2021. (§1.4.2)
 - “Reimbursement PAGA Settlement Period” means March 16, 2020 to the date of preliminary approval of the settlement. (§1.31.2)
- Based on a review of its records to date, LPU estimates there are 61 Adjunct Class Members, 138 Reimbursement Class Members, 61 Aggrieved Adjunct Employees, and 138 Aggrieved Reimbursement Employees. (§4.1) If the total number of Adjunct Class Members exceed 62 by more than 10% (i.e., more than 68), then the portion of the GFV attributed to Adjunct Class Members shall increase by the same percentage by which the Adjunct Class exceeds 68. If the total number of Reimbursement Class Members exceed 125 by more than 10% (i.e. more than 138), then the portion of the GFV attributed to Reimbursement Class Members shall be increased by the same percentage by which the Reimbursement Class exceeds 138. (§8)
 - The total number of Adjunct Class Members is 61 and the total number of Reimbursement Class Members is 137. (Butler Decl., ¶11.)
- The Gross Settlement Amount (“GSA”) is **\$138,000**, non-reversionary. (§3.1)
- The Net Settlement Amount (“Net”) (**\$51,500**) is the GSA minus the following:
 - Up to **\$46,000 (1/3)** for attorney fees (§3.2.2);
 - Up to **\$20,000** for litigation costs (*Ibid.*);
 - Up to **\$5,000** for a Service Payment to the Named Plaintiff (§3.2.1);
 - Up to **\$8,000** for settlement administration costs (§3.2.3); and
 - Payment of **\$7,500** (75% of \$10,000 PAGA penalty) to the LWDA. (§3.2.5)
- Defendants will pay their share of taxes separate from the GSA. (§3.1)
- Funding of Settlement: LPU shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay LPU’s share of payroll taxes by transmitting the funds to the Administrator no later than 21 days after the Effective Date or as otherwise directed by the court. (§4.3)
- Uncashed Settlement Checks: The face of each check shall prominently state the date (180 days after the date of mailing) when the check will be voided. (§4.4.1) .For any

Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks in conformity with Code of Civil Procedure Section 384, subd. (b) to Christian Legal Aid of Los Angeles (“Cy Pres Recipient”). The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient. (¶4.4.3)

- The settlement administrator will be Simpluris, Inc. (¶1.2)
- The proposed settlement was submitted to the LWDA on March 14, 2023. (See POS)

ANALYSIS OF SETTLEMENT AGREEMENT

A. Does a presumption of fairness exist?

The Court preliminarily found in its Order on December 15, 2023, that the presumption of fairness should be applied. No facts have come to the Court’s attention that would alter that preliminary conclusion. Accordingly, the settlement is entitled to a presumption of fairness as set forth in the preliminary approval order.

B. Is the settlement fair, adequate, and reasonable?

The settlement was preliminarily found to be fair, adequate and reasonable. Notice has now been given to the Class and the LWDA.

Reaction of the class members to the proposed settlement.

Number of class members: 160 Class members. (Butler Decl., ¶6.)
Number of notice packets mailed: 160 (*Id.* at ¶7.)
Number of undeliverable notices: 2 (*Id.* at ¶10.)
Number of opt-outs: 2 (*Id.* at ¶14; Butler Supp. Decl., ¶¶3-4.)
Number of objections: 0 (Butler Decl., ¶15; Butler Supp. Decl., ¶¶3-4.)
Number of participating class members: 158 (Butler Decl., ¶17.)
Average individual Adjunct Class payment: \$449.94 (*Id.* at ¶19.)
Highest estimated Adjunct Class payment: \$1,037.13 (*Ibid.*)
Lowest estimated Adjunct Class payment: \$37.04 (*Ibid.*)
Average individual Reimbursement Class payment: \$203.31 (*Ibid.*)
Highest estimated Reimbursement Class payment: \$302.03 (*Ibid.*)
Lowest estimated Reimbursement Class payment: \$18.88 (*Ibid.*)

The Court finds that the notice was given as directed and conforms to due process requirements. Given the reactions of the Class Members and the LWDA to the proposed settlement and for the reasons set for in the Preliminary Approval order, the settlement is found to be fair, adequate, and reasonable.

C. Attorney Fees and Costs

Class Counsel requests \$46,000(33%) in fees and litigation costs and expenses in the amount of \$15,106.42. (Motion ISO Final: 1:8-9.) The Settlement provides for attorney's fees up

to \$46,000 and costs of \$20,000 (Settlement Agreement, ¶3.2.2); the class was provided notice of the requested awards, and none objected. (Butler Decl., ¶15; Butler Supp. Decl., ¶¶3-4.)

“Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method.” (*Wershba* at 254.) Here, class counsel requests attorney fees using the percentage method, as cross checked by lodestar. (Motion ISO Final, pgs. 5-9.)

The fee request represents 33% of the gross settlement amount which is the average generally awarded in class actions. See *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558, fn. 13 (“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”).

Counsel has provided the following lodestar information:

Timekeeper	Rate	Hours	Lodestar
Julian Hammond	\$975	15.4	\$15,015.00
Adrian Barnes	\$825	17.9	\$14,767.50
Polina Brandle	\$775	17.2	\$12,900.00
Ari Cherniak	\$695	126.9	\$88,195.50
Total		177.4	\$130,878.00

(Hammond Decl. ISO Final, ¶¶11-12.)

Therefore, Counsel represent they have spent over 177.4 hours in connection with this litigation, resulting in a lodestar of \$130,878.00, which would require a negative multiplier to yield the requested fee amount. (*Ibid.*)

As for costs, Class Counsel has incurred costs of \$15,106.42. (Hammond Decl. ISO Final, ¶45.) Class Counsel is requesting \$15,106.42 in costs, which is equal to the settlement cap of \$20,000. The costs in this case include, but are not limited to, filing fees (\$1,545.07), service fees (\$1,058.25), mediation (\$8,750), and witness location (\$2,000). (*Ibid.*) The costs seem reasonable and necessary to litigation.

Based on the above, the Court awards **\$46,000 (1/3)** for attorney fees and **\$15,106.42** for litigation costs.

D. Incentive Awards to Class Representatives

The Settlement agreement provides for up to \$5,000 of an incentive award for the Named Plaintiff. (Settlement Agreement, ¶3.2.1.)

Plaintiff Guerrero's contributions to this litigation include, but are not limited to spending at least 10 hours on the following: obtaining counsel, meeting with counsel, gathering documents, reviewing documents, answering questions, remaining available for mediation telephonically, and reviewing the settlement agreement. (Guerrero Decl., ¶¶4-9.)

Based on the above, the Court approves the enhancement award in the amount of **\$5,000**.

E. Claims Administration Costs

The claims administrator requests **\$7,000** for the costs of administering the settlement. (Butler Decl., ¶19.) This is less than the \$8,000 maximum amount estimated in the Settlement Agreement; (Settlement Agreement, ¶3.2.3); and disclosed in the notice to class members. Based on all the work performed by the Claims Administrator, the Court awards costs in the requested amount.

CONCLUSION

Based on the foregoing, the Court orders that:

- 1) The Parties' Motion for Final Approval of Class Action Settlement is GRANTED as the settlement is fair, adequate, and reasonable.
- 2) The essential terms are:
 - A. The Gross Settlement Amount ("GSA") is **\$138,000**, non-reversionary. (¶3.1)
 - B. The Net Settlement Amount is the GSA minus the following:
 - **\$46,000** (1/3) for attorney fees to Class Counsel (¶3.2.2);
 - **\$15,106.42** for litigation costs to Class Counsel (*Ibid.*);
 - **\$5,000** incentive award to the Named Plaintiff (¶3.2.1);
 - **\$7,000** for settlement administration costs (¶3.2.3); and
 - **\$7,500** (75% of \$10,000 PAGA penalty) to the LWDA. (¶3.2.5)
 - C. Employer's share of the payroll taxes on the taxable portion of the settlement payments shall be paid separately from the GSA by Defendant. (¶3.1)
 - D. Plaintiffs' release of Defendants from claims described herein.

By **June 18, 2024**, Class Counsel must give notice to the class members pursuant to California Rules of Court, rule 3.771(b) and to the LWDA, if applicable, pursuant to Labor Code §2699 (1)(3).

By **April 21, 2025**, Class Counsel must file a Final Report Re: Distribution of the Settlement Funds.

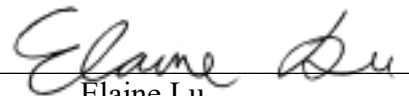
The Court hereby sets a Non-Appearance Case Review for **April 28, 2025**, 8:30 a.m., Department 9.

COURT CLERK TO GIVE NOTICE TO MOVING PARTY. THE MOVING PARTY TO GIVE NOTICE TO ALL OTHER PARTIES.

IT IS SO ORDERED.

DATED: April 18, 2024




Elaine Lu
Judge of the Superior Court
Elaine Lu / Judge