

HAMMONDLAW, P.C.
Julian Hammond (SBN 268489)
jhammond@hammondlawpc.com
Polina Brandler (SBN 269086)
pbrandler@hammondlawpc.com
Ari Cherniak (SBN 290071)
acherniak@hammondlawpc.com
1201 Pacific Ave., Suite 600
Tacoma, WA 98402
(310) 601-6766
(310) 295-2385 (Fax)

Attorneys for Plaintiff and the Putative Classes

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

VIKRAM PETERS, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

LIFE PACIFIC UNIVERSITY, a
California Non-Profit Corporation,

Defendant.

CASE NO. 22STCV06988

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

Date: July 13, 2023

Time: 10:00 a.m.

Dept. 9

Judge: Hon. Yvette M. Palazuelos

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I. INTRODUCTION

Plaintiff Vikram Peters (“Plaintiff”) seeks preliminary approval of a \$138,000 settlement of his class and representative wage and hour claims against Defendant Life Pacific University (“Defendant” or “LPU”). The Settlement Agreement (“SA”) is attached as **Exhibit 1** to the Proposed Order filed herewith.

This class action was brought on behalf of approximately 61 Adjunct Faculty employed by Defendant in California (“Adjunct Class Members” or “Adjunct CMs”) from February 24, 2018 through December 31, 2019 (“Adjunct Class Period”) and 138 employees who worked remotely in California (“Reimbursement Class Members”) from March 16, 2020 through June 30, 2021 (“Reimbursement Class Period”). This settlement was reached after a thorough investigation by Plaintiff’s Counsel, the exchange of documents and information for purposes of mediation, and a full-day mediation with a skilled mediator.

The settlement will result in average payments to Adjunct CMs of \$1,131.15 gross and \$401.64 net, and an Adjunct CM who worked the entire 22-month Adjunct Class Period can expect to receive approximately \$1,443.11. The settlement will also result in average payments to Reimbursement Class Members of \$500 gross and \$177.54 net, and a Reimbursement CM who worked for the entire 15.5-month Reimbursement Class Period can expect to receive approximately \$254.52. Declaration of Julian Hammond In Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“Hammond Decl.”), filed herewith, ¶¶ 41, 46. These are excellent results when considering Defendant’s potential argument that the First Amendment’s “ministerial exemption” was a complete bar to Plaintiff’s recovery, and the fact that Plaintiff entered into an arbitration agreement with Defendant with a class action waiver that, if enforced, could render his class claims essentially worthless or difficult to certify. Id. ¶ 21-23.

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

II. OVERVIEW OF THE SETTLEMENT TERMS

The Settlement Agreement resolves all claims of the Plaintiff and the proposed Classes alleged in the Complaint. A summary of the Settlement terms follows:

1 1. Gross Settlement Amount (“GSA”) – Defendant will pay a non-reversionary sum of
2 \$138,000 to settle this case. SA § 1.22. Defendant will also pay the employer’s share of payroll taxes
3 separately from the gross settlement. SA § 3.1.

4 2. Attorneys’ Fees, Costs, and Named Plaintiff’s Enhancement Award – Class Counsel will
5 seek attorneys’ fees of up to \$46,000 (1/3 of the GSA) and up to \$20,000 to reimburse their out-of-pocket
6 litigation costs. SA § 3.2.2. The SA also provides for payment of \$5,000 to Plaintiff as his enhancement
7 award, subject to Court approval. SA § 3.2.1.

8 3. Administration Costs – The Parties have mutually agreed to use Simpluris, Inc. as the
9 Settlement Administrator. SA § 3.2.3. Simpluris, Inc. is an experienced class action administrator and
10 has provided notification and/or claims administration services in thousands of cases. See Simpluris
11 Declaration, filed herewith. The Settlement Administrator’s expenses shall be reimbursed up to a cap of
12 \$8,000. *Id.*

13 4. PAGA Payment – The Settlement allocates \$10,000 to PAGA penalties, with \$7,500 to
14 be paid to the California Labor and Workforce Development Agency (“LWDA”) as its 75% share of
15 PAGA penalties, and \$2,500 to be distributed to Class Members who worked during the relevant PAGA
16 Periods. SA §§ 1.34.

17 5. Net Settlement Amount (“NSA”) – The NSA will total approximately \$49,000 if the Court
18 grants the fees and costs requested by Plaintiff in full. The NSA will be split evenly between the Adjunct
19 Class (“Adjunct NSA”) and the Reimbursement Class (“Reimbursement NSA”) and will be paid *pro rata*
20 based on the number of pay periods worked during the relevant Class Periods. SA § 3.2.4.

21 6. Class Notice – Within fifteen (15) calendar days of preliminary approval, Defendant will
22 provide the Settlement Administrator with a Class list containing the Class Member’s name, last-known
23 mailing address, Social Security number, and dates of employment (“Class Data”). SA § 4.2. Within
24 fourteen (14) calendar days of receiving the Class Data, Simpluris will mail to each Class Member a
25 Notice substantially in the form attached to the Settlement Agreement as **Exhibit A**. SA § 7.4.2.

26 7. Opting Out or Objecting – Class Members will automatically receive their share of the
27 NSA unless s/he opts out. Class Members who wish to opt-out must do so within sixty (60) calendar
28 days of the date the Notices are mailed out (plus an additional 14 days for Class Members whose Class
Notice is re-mailed). SA § 7.5.1. Any Class Member who opts out will not be entitled to receive any
payment under the settlement (except for his or her share of PAGA Penalties) and will not be bound by
the settlement (except for the release of PAGA claims). SA § 7.5.4. Class Members who do not opt out

1 may object in writing within sixty (60) calendar days of the date the Notices are mailed out (plus an
2 additional 14 days for Class Members whose Class Notice is re-mailed). SA § 7.7.

3 8. Disputes – If any CM disagrees with the pay periods information on their Notice, they
4 may dispute such information. SA § 7.6. Simpluris will resolve challenges based on Defendant’s records
5 and any documents or information presented by the CMs. *Id.*

6 9. Tax Consequences of Settlement Payments – For tax purposes, payments from the
7 Adjunct NSA will be allocated 1/3 wages (the “Wage Portion”) and 2/3 as interest and penalties (“Non-
8 Wage Portion”) and payments from the Reimbursement NSA will be allocated 100% Non-Wage Portion.
9 SA § 3.2.4.3.

10 10. Scope of Release and Final Judgment – Class Members shall fully release LPU from all
11 claims that were alleged, or that could have been alleged, based on the facts included in the operative
12 Complaint on their behalves; and claims for PAGA Penalties based on the Released Claims and PAGA
13 Notices and arising during the PAGA Periods. SA §§ 5.1- 5.4.

14 **III. OVERVIEW OF THE LITIGATION**

15 On February 24, 2022, Plaintiff filed this lawsuit in Los Angeles County Superior Court asserting
16 claims under Labor Code §§ 226.2, 1194, 226.7, 201-203, 2802 and the UCL. Hammond Decl. ¶ 12.
17 Thereafter, the parties agreed to attend a mediation and engage in informal discovery. Defendant
18 produced relevant data and documents including the size of each class; course data including (a) the title
19 of each course taught by Adjuncts during the Adjunct Class Period, (b) number of credits, (c) type of
20 course (i.e., in person or online), (d) academic term the course was taught in, (e) day(s) of the week
21 classes were held, and (f) start time and end time of each class; faculty handbooks; job descriptions;
22 Covid-19 telecommuting guidelines; and Plaintiff’s personnel file. Hammond Decl. ¶ 13.

23 From the informal discovery and investigation, Plaintiff determined that Adjunct CMs were
24 employed pursuant to standardized Adjunct Faculty Contracts (“Contracts”) with the first day of the
25 Contract corresponding to the first day of classes and the last day of the Contract corresponding to the
26 date that grades are due. The compensation under the Contract was based on the number of units in the
27 assigned Course, which could be “pro-rated” based on enrollment levels. *Id.* ¶ 14. Plaintiff therefore
28 believed that he could establish that Adjuncts were not salaried because a “salary” is a “predetermined
amount that is not subject to reduction based upon the quantity or quality of work.” *Negri v. Koning &
Associates*, 216 Cal. App. 4th 392, 399 (2013); rather it more closely resembled a piece rate. The
Contracts also provided that “Appointments to the Adjunct Faculty are made on a semester-by-semester

1 basis. Therefore, no further contract beyond this current Adjunct Faculty Contract is implied or
2 guaranteed.” Plaintiff believed he could establish that Adjunct CMs were discharged at the end of each
3 contract for purposes of Labor Code § 201. Hammond Decl. ¶ 15.

4 The Contracts provided no pay for the time Adjunct CMs spent working prior to the first day of
5 classes preparing the syllabus, or for non-teaching tasks Adjuncts performed during each course such as
6 assisting students outside of the classroom. Accordingly, Plaintiff alleged that Adjunct CMs were not
7 paid for all hours worked, separate and apart from the “piece” (i.e., the Course Rate), in violation of
8 Labor Code §§ 226.2 and 1194. Hammond Decl. ¶ 16.

9 Plaintiff also alleged that during the Adjunct Class Period, as non-exempt piece-rate employees,
10 Adjunct CMs were entitled to hourly and separate pay for rest breaks, pursuant to Labor Code §§ 226.2
11 and 226.7. Plaintiff alleged that Defendant maintained policies and/or practices that impeded Adjunct
12 CMs’ ability to take off-duty rest breaks because it expected and/or required Adjunct CMs to be available
13 to students during the entire time they were in the classroom, and before and after classes, which was the
14 only time otherwise available for Adjunct CMs to take breaks. Therefore, each time an Adjunct CM
15 worked 3.5 hours, LPU failed to provide a compliant, paid rest period, or pay premium pay for missed
16 breaks. Hammond Decl. ¶ 17.

17 In Spring 2020, LPU reclassified Adjunct CMs as non-exempt, began requiring them to record
18 all of their hours worked, and began paying them hourly. LPU also provided Adjunct CMs with additional
19 hours for pre-course prep time, and began allowing Adjunct CMs to seek additional compensation for
20 other non-teaching tasks in excess of those hours. Hammond Decl. ¶ 18.

21 Plaintiff also contended that Defendant did not reimburse its employees for remote work
22 expenses they incurred, including expenses Adjunct CMs incurred teaching online courses during the
23 Adjunct Class Period, and expenses incurred by Reimbursement Class Members who were required to
24 work remotely during the COVID-19 campus closure. Hammond Decl. ¶ 19.

25 On September 22, 2022, the Parties participated in a mediation session with Lisa Klerman, an
26 experienced mediator who has mediated numerous wage-hour class and PAGA actions. Prior to the
27 mediation, Plaintiff submitted a detailed mediation brief supported by documents obtained in informal
28 discovery. Hammond Decl. ¶ 20. At mediation, Plaintiff was confronted with a number of significant
hurdles to reaching a class settlement including Defendant’s potential contention that Plaintiff’s wage
and hour claims are barred by the First Amendment’s “ministerial exception” or by its arbitration
agreement. Id. ¶ 20-23.

1 Defendant could have contended that Plaintiff's claims are barred by the "ministerial exception"
2 that protects the right of religious institutions to decide "matters of faith and doctrine" without
3 government intrusion. *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S.Ct. 2049, 2055 (2020);
4 *Hosanna-Tabor Evangelical Lutheran Church and Sch. v. EEOC*, 565 U.S. 171, 186 (2012)). Defendant
5 could have contended that the "ministerial exception" applies to claims under state wage and hour law.
6 *Alcazar v. Corp. of the Catholic Archbishop*, 627 F.3d 1288, 1293 (9th Cir. 2010); (holding ministerial
7 exception bars state wage and hour claims); *Henry v. Red Hill Evangelical Lutheran Church of Tustin*,
8 201 Cal. App. 4th 1041, 1053 (2011). Defendant could have further contended that even if the ministerial
9 exception were not a complete defense, it could still result in a denial of class certification, because of
10 the individualized factors the courts look at when deciding whether religious instruction is an important
11 function of the employees' job and thus whether the "ministerial exception" applies. *Our Lady of*
12 *Guadalupe School v. Morrissey-Berru*, 140 S.Ct. at 2067. Hammond Decl. ¶ 21-22.

11 Defendant also could have contended that its arbitration agreement included in the Faculty
12 Handbook barred Plaintiff's class claims. The arbitration agreement provided: "*The parties to this*
13 *contract agree that [the arbitration process] shall be the sole remedy for any controversy or claim arising*
14 *out of the employment relationship or this agreement and expressly waive their right to file a lawsuit*
15 *against each other in any civil court for such disputes, including any class action proceeding, except to*
16 *enforce a legally binding arbitration decision.*" Hammond Decl. ¶ 23.

16 LPU also argued that Plaintiff faced significant risks on class certification and the merits with
17 respect to each claim for reasons other than the arbitration agreement, as detailed below. *Id.* ¶ 24.

18 After a full day of mediation, the parties reached agreement on the basic terms of the settlement,
19 and in due course entered into the formal settlement agreement that is now submitted to the Court for
20 approval.

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

22 When a negotiated class action settlement has been reached prior to certification, as here, the
23 Court may make an order approving or denying certification of a provisional settlement class. Cal. Rules
24 of Court, Rule 3.769(d). The decision to certify a class is purely a procedural one and should be based
25 on the allegations in the Complaint and not on the perceived factual or legal merit of the class claims.
26 *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-40 (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

1 adjudication. *Brinker Restaurant Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1021 (2012); *Linder*, 23 Cal. 4th
2 at 435. All class certification requirements are met in this case.

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

4 Whether a class is ascertainable is determined by examining the class definition, the size of the
5 class, and the means available for identifying class members. *See Reyes v. Board of Supervisors*, 196
6 Cal. App. 3d 1263, 1271 (1987). Class members are “ascertainable” when they may be readily identified
7 without unreasonable expense or time by reference to official records. *See Noel v. Thrifty Payless, Inc.*,
8 7 Cal. 5th 955, 980 (2019) (“We conclude that the objectives of this requirement are best achieved by
9 regarding a class as ascertainable when it is defined ‘in terms of objective characteristics and common
10 transactional facts’ that make ‘the ultimate identification of class members possible when that
11 identification becomes necessary.’” (quoting *Hicks v. Kaufman & Broad Home Corp.*, 89 Cal. App. 4th
12 908, 915 (2001))). These criteria are met here as Defendant’s records are sufficient to permit identification
13 of the members of the Classes.

14 The Adjunct and Reimbursement Classes are sufficiently numerous because they consist of 61
15 and 138 members, respectively. Hammond Decl. ¶ 3; *see also Rose v. City of Hayward*, 126 Cal. App.
16 3d 926, 934 (1981); 1 Newberg on Class Actions § 3.12 (5th ed. 2011) (“[A] class of 40 or more members
17 raises a presumption of impracticability of joinder.”).

18 **B. “Community of Interest” Exists Among Class Members**

19 The “community of interest” requirement embodies three factors: (1) “predominant common
20 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
21 class representatives who can adequately represent the class.” *Fireside Bank v. Super. Ct.*, 40 Cal. 4th
22 1069, 1089 (2007) (quoting *Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 470 (1981)). Plaintiff
23 satisfies each of these elements.

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

25 Where the defendant employer’s policies or conduct is uniformly directed at a class or classes of
26 employees, as it is here, the class-wide impact of the defendant’s policies satisfies the commonality
27 requirement. *See Sav-On Drugs Stores, Inc. v. Super. Ct.*, 34 Cal. 4th 319, 331 (2004) (upholding class
28 certification, where the common issue was whether the employer properly classified grocery store
managers as exempt from California's overtime requirements).

Here, Plaintiff challenges common pay policies raising predominant common questions of law
and fact including (1) whether Defendant misclassified Adjunct CMs as exempt; (2) whether the “Course

Rate” constituted a piece rate; (3) whether the compensation set out in the Contracts covered work performed outside of the Contract; (4) whether Adjunct CMs were “discharged” for purposes of Labor Code § 201; and (5) (as to Adjuncts and the Reimbursement Class) whether Defendant failed to reimburse home office expenses in violation of Labor Code § 2802.

2. Plaintiff’s Claims Are Typical of the Class Claims

The test of typicality is whether Plaintiff and other Class 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.” *Seastrom v. Neways, Inc.*, 149 Cal. App. 4th 1496, 1502 (2007) (internal citations and quotation marks omitted); *see also* 1-3 California Class Actions Practice and Procedure § 3.02 (2007). Here, Plaintiff’s claims are typical of both Classes he seeks to represent because he was subject to the same policies and practices, suffered the same types of injury, and seeks the same types of relief, as the putative Classes.

3. Plaintiff and His Attorneys Will Adequately Represent the Class

“Adequacy of representation depends on whether the plaintiff’s attorney is qualified to conduct the proposed litigation and the plaintiff’s interests are not antagonistic to the interests of the class.” *Caro v. Procter & Gamble Co.*, 18 Cal. App. 4th 644, 669, n.21 (1993) (citations and quotation marks omitted). Both elements are satisfied here. Plaintiff’s Counsel are highly skilled and experienced in similar cases and have extensive class action litigation experience. Hammond Decl. ¶¶ 5-9. Plaintiff is committed to representing the interests of the Classes, does not have any conflicts with any Class Member, and his interests are virtually coextensive with those of the Class Members. *See* Declaration of Vikram Peters, filed herewith.

C. This Class Action Is a Superior Method of Adjudication

Plaintiff and the Adjunct Class claims are based on Plaintiff’s contentions that Defendant had uniform policies and/or practices of paying Adjuncts by the piece, failing to pay hourly and separately for non-teaching time, failing to authorize and permit paid off-duty rest breaks, and failing to reimburse necessarily incurred business expenses. All of these claims involve common evidence, including uniform employment contracts Defendant issued to Class Members, handbooks, compensation policies, and remote work policies. Accordingly, it would be inefficient to resolve these Class claims at separate trials. *See Bufil v. Dollar Fin. Grp., Inc.*, 162 Cal. App. 4th 1193, 1208 (2008). The class action mechanism in this case will also allow Plaintiff and the Class Members to obtain redress for their relatively small claims, which would otherwise be impractical to litigate on an individual basis.

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

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

3 Court approval of a class action settlement is a two-step process: (1) a preliminary review and
4 contingent approval by the trial court, and (2) after notice has been distributed to the class members, a
5 hearing and a detailed review that includes their responses. Manual for Complex Litigation (Fourth)
6 § 21.6 (“Manual”); Cal. Rules of Court, Rule 3.769(a); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794,
7 1800-1801 (1996). Thus, the trial court’s preliminary approval of the settlement is simply a conditional
8 finding that the settlement appears to be within the range of acceptable settlements. *See, e.g.*, 4 Newberg
9 on Class Actions § 11.25 (4th ed. 2002); Manual § 21.6. Applying the criteria for preliminary approval
10 in this case reveals a substantial basis for granting the preliminary approval this Motion seeks.

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

12 In analyzing whether a settlement is fair and reasonable, courts consider a number of factors: (1)
13 the strength of the plaintiff’s case balanced against the settlement amount; (2) the risk, expense,
14 complexity and likely duration of further litigation, the risk of maintaining class action status through
15 trial; (3) the extent of discovery completed and the stage of the proceedings; (4) the experience and view
16 of counsel; and (5) the reaction of the class members to the proposed settlement. *Kullar v. Foot Locker*
17 *Retail, Inc.*, 168 Cal. App. 4th 116 (2008) (quoting *Dunk*, 48 Cal. App. 4th at 1801). Indeed, a settlement
18 is initially “presumed to be fair” when (1) it “is reached through arm’s-length bargaining; (2)
19 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel
20 is experienced in similar litigation; and (4) the percentage of objectors is small.” *Chavez v. Netflix, Inc.*,
21 162 Cal. App. 4th 43, 52 (2008) (quoting *Dunk*, 48 Cal. App. 4th at 1802).

22 The 50% of the gross settlement amount allocated to the Adjuncts represents 77% of Defendant’s
23 realistic exposure on the Adjunct class claims (excluding PAGA) and 75% on the Reimbursement class
24 claims (excluding PAGA), after considering Defendant’s actual and potential defenses on the merits and
25 risks on class certification. Given the substantial relief obtained for the Classes and the uncertainties and
26 delays of litigation, the settlement meets the criteria for preliminary approval.

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

28 The settlement is the result of hard-fought extensive settlement negotiations between the parties
conducted at arm’s length and informed by substantial factual and legal investigation. Throughout this
case, Class Members have been represented by counsel with extensive experience in wage and hour
litigation, and, in particular, class actions alleging similar types of claims. Hammond Decl. ¶¶ 5-9.

Class Counsel have spent a considerable amount of time prosecuting this case, including, but not limited to, drafting pleadings, investigating, researching applicable law, meeting and conferring with Defendant's counsel, analyzing documents and data produced by Defendant, preparing for and attending a full-day mediation, and negotiating the settlement agreement and related documents. Hammond Decl. ¶¶ 12-25. A well-respected and experienced mediator, Lisa Klerman, conducted the mediation session. *Id.* ¶ 20.

2. The Settlement Amount is Fair and Reasonable Considering Potential Recovery and the Risks of Litigating the Case

Comparison of the extent of the class recovery to the strength of Plaintiff's case is the most important factor in analyzing the fairness of the settlement. *Kullar*, 168 Cal. App. 4th at 130. The proposed settlement easily passes the *Kullar* test. The \$69,000 of the GSA allocated to the Adjunct claims provides 77% of the recovery that Adjuncts could realistically recover achieve further litigation (including interest but excluding PAGA). *Id.* Adjunct CMs will receive an average payment of \$401.64 net and \$1,131.15 gross. Hammond Decl. ¶ 41. The \$69,000 of the GSA allocated to the Reimbursement Class provides 75% of the recovery that Reimbursement Class Members could realistically achieve through further litigation (including interest but excluding PAGA). Reimbursement Class Members will receive an average payment of \$177.54 net and \$500 gross. *Id.* ¶ 46. These percentage do not include substantial discounts that can be applied to Plaintiff's class claims in light of Defendant's potential "ministerial exception" defense and its arbitration defense based on its arbitration agreement with a class action waiver, either of which could arguably lead to no recovery for the class at all.

In addition to the major risks posed by the ministerial exception and LPU's arbitration clause, Plaintiff also faced the following actual and potential arguments to the merits of each of his claims

a. Unpaid Wages Claim (Labor Code §§ 1194, 226.2): Plaintiff calculated LPU's maximum exposure as \$31,878 (including interest but excluding PAGA). Hammond Decl. ¶ 27. Plaintiff applied a 25% discount for Defendant's contention that this claim was not certifiable because the amount of time each Adjunct CM spent on non-teaching activities, and whether these activities were performed under LPU's control, would lead to individualized issues. *Id.* ¶ 28. As to the merits, Plaintiff applied a further 25% discount for Defendant's contention the Course Rate incorporated all duties performed before and during the Course, for the risk that a court would find Adjunct CMs are exempt employees, and for the risk that a fact-finder would find that Plaintiff's estimated number of unpaid hours per Course was exaggerated and that little or no work was required for many Adjunct CMs who taught the same course multiple times. *Id.* ¶ 29. After applying discounts, LPU's realistic exposure on the unpaid wage

claim was \$17,931.38. *Id.*

b. **Rest Break Claim (Labor Code §§ 226.2, 226.7):** Plaintiff calculated LPU's maximum exposure on this claim as \$2,534.50 (including interest but excluding PAGA). Hammond Decl. ¶ 30.

Plaintiff applied a 25% discount for the risk that individualized issues would predominate because whether rest break time was included in the piece-rate would depend on each Adjunct CMs understanding of what the piece covered; and for the risk individual inquiries would be necessary to determine whether Adjunct CMs were able to take rest breaks during classes, and if they did not, whether that was their own choice and not the result of Defendant's job duties and requirements. *Id.* ¶ 31. As to the merits, Plaintiff applied a further 25% discount for the risk that Plaintiff and Adjunct CMs were exempt employees and not entitled to rest breaks. *Id.* ¶ 32. After applying discounts, LPU's realistic exposure on the rest break claim was \$1,710.72. *Id.*

c. **Waiting Time Penalties (Labor Code § 203):** Plaintiff calculated LPU's maximum exposure for waiting time penalties as \$120,734.71. Hammond Decl. ¶ 34. Plaintiff applied a minimal 10% discount for the class certification risk because his theory of liability rests on common legal and factual questions of what constitutes a discharge within the meaning of § 201, whether Contracts are agreements for a definitive period of time, what is the end date of the Contract, and whether late payment was willful. *See Rodman v. Safeway, Inc.*, No. 11-cv-03003-JST, 2014 U.S. Dist. LEXIS 314438, at *25 (N.D. Cal. Mar. 9, 2014) (holding that "claims arising from interpretations of a form contract appear to present the classic case for treatment as a class action") (citing cases). Hammond Decl. ¶ 35. Plaintiff applied a further 50% discount on the merits for the argument that (1) there was no "discharge" at the end of each contract because many Adjuncts worked from term to term and maintained an employment relationship with LPU; and (2) LPU had a good faith dispute that Class Members were not owed any wages for non-teaching time or rest breaks, which could negate the willfulness requirement of Labor Code § 203; *Barnhill v. Roberts Saunders & Co.*, 125 Cal. App. 3d 1, 8-9 (1981)¶ (an employer's failure to pay wages is not "willful," if the legal duty to pay them was unclear at the time of the violation.); and (3) because LPU also argued with some logic that it cannot be liable for penalties on every contract that it issued because many Adjunct CMs taught more than one course (and were issued more than one contract) in the same semester. Hammond Decl. ¶ 36. After applying discounts, LPU's realistic exposure is \$54,330.62. *Id.*

1 **d. Adjunct Unreimbursed Expenses Claim (Labor Code § 2802):** Plaintiff calculated
2 LPU's maximum exposure for Adjuncts' unreimbursed expenses as \$27,720 (including interest but
3 excluding PAGA). Hammond Decl. ¶ 37.

4 Plaintiff applied a 25% reduction for Defendant's contention that individualized issues would
5 predominate including whether expenses incurred by each Adjunct were reasonable, whether LPU was
6 aware that Adjuncts incurred such expenses, and whether such expenses were reimbursed; and a further
7 25% discount based on LPU's contention that not all Adjuncts incurred the same types of expenses, and
8 that even if expenses were incurred, these were voluntary and/or minimal. Hammond Decl. ¶¶ 38-39.
9 After applying these discounts, LPU's realistic exposure was \$15,592.50. *Id.* ¶ 39.

10 **e. Total Exposure on Adjunct CMs Claims:** LPU's maximum and realistic exposure is as
11 follows:

Labor Code Section	Maximum Damages	Realistic Exposure
Unpaid Wages (§§ 226.2 / 1194)	\$31,878.00	\$17,931.38
Rest Breaks (§ 226.7)	\$2,534.40	\$1,710.72
Waiting Time Penalties (§ 203)	\$120,734.71	\$54,330.62
Unreimbursed Expenses (§ 2802)	\$27,720	\$15,592.50
Total	\$182,867.11	\$89,565.22

16 **f. The Allocation to the Class is Fair and Reasonable:** The \$69,000 of the GSA allocated
17 to Adjunct CMs represents 38% of Defendant's maximum exposure and 77% of its realistic exposure.
18 Hammond Decl. ¶ 41. The average recovery per Adjunct is \$1,131.15 gross and \$401.64 net. *Id.* An
19 Adjunct CM who worked the entire Adjunct Class Period will receive approximately \$1,443.11. *Id.* These
20 are substantial payments, especially in light of Defendant's potential ministerial exception defense and
21 arbitration defense that could render Plaintiff's class claims worthless if enforced. *Id.* The average net
22 and gross shares are also comparable with similar cases where plaintiffs faced risk based on an arbitration
23 agreement with a class action waiver. *Id.*

24 **g. ER Class Claims (Lab. Code § 2802):** Plaintiff calculated Defendant's maximum
25 liability to the Reimbursement Class as \$164,120 (including interest but excluding PAGA). Hammond
26 Decl. ¶ 43.

27 **Class Certification/ Merits Risk:** Plaintiff applied a 25% for Defendant's contention that
28 individualized issues would predominate including whether expenses incurred by each Reimbursement

1 Class Member were reasonable, whether LPU was aware that Reimbursement Class Members incurred
2 such expenses, and whether such expenses were reimbursed. Plaintiff applied a further 25% discount for
3 LPU's contention that not all Reimbursement CMs incurred certain types of expenses, and a fact-finder
4 might find that Plaintiff's calculation of Defendant's liability was inflated, given that many
5 Reimbursement CMs were part-time adjuncts. Id. ¶¶ 44-45. After discounts, LPU's exposure on this
6 claim is \$92,317.50. Id. ¶ 45.

7 **The Allocation to the ER Class is Fair and Reasonable:** The \$69,000 of the GSA allocated
8 to the Reimbursement Class represents 42% of Defendant's maximum exposure and 75% of its realistic
9 exposure. The average net payment to Reimbursement CMs is \$177.54 and the gross is \$500, and a
10 Reimbursement CM who worked for the entire Reimbursement Class Period can expect to receive
11 approximately \$254.52. Hammond Decl. ¶ 46. These are substantial payments and Reimbursement CMs
12 will obtain a recovery now without the lengthy risks and years of delay posed by further litigation. Id.

13 **The PAGA Allocation is Fair and Adequate:** Plaintiff calculated Defendant's maximum
14 liability for PAGA penalties as \$548,600. Hammond Decl. ¶ 47. The \$10,000 allocated to PAGA
15 represents 2% of Defendant's total exposure and is comparable to PAGA allocations approved by courts
16 in similar cases. Id. ¶ 48. More fundamentally, this allocation is fair and reasonable for several reasons
17 listed below:

18 First, the overall settlement resulted in robust relief for each Class which is what courts look at
19 when assessing amount attributed to PAGA penalties. *See O'Connor v. Uber Techs., Inc.*, No. 201 F.
20 Supp. 3d 1110, 1134 (N.D. Cal. Aug. 18, 2016) (where settlement for the class claims is robust, the
21 purpose of PAGA may be fulfilled because by providing fair compensation to class members, the
22 settlement has a deterrent effect on defendant and other employers, thus fulfilling the purpose of PAGA).
23 In *Gola v. University of San Francisco*, No. CGC-18-565018 (San Francisco Cnty. Super. Ct. March 3,
24 2021) a recent case brought by HammondLaw on behalf of adjunct instructors, the court found that
25 substantial monetary relief in form of statutory penalties under § 226(e) (and fees and costs plaintiff
26 would seek) acted as a sufficient punishment and deterrent, and awarded only 15% of the full PAGA
27 penalties—and this was a case where defendant did not have a significant potential to avoid liability or a
28 good faith defense. Hammond Decl. ¶ 49.

29 Second, LPU contended that it operated in good faith and reasonably believed it was in
30 compliance with the Labor Code; and overhauled its policies at issue in this lawsuit in January 2020 to
31 bring them into compliance with the Labor Code. Thus, the lawsuit fulfills the purpose of PAGA which

1 is to ‘remediate present violations and deter future ones,’ not to redress employees’ injuries.” *Kim v.*
2 *Reins International California, Inc.*, 9 Cal. 5th 73, 86 (2020); *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030,
3 1037 (2016) (significant reduction to PAGA penalties appropriate because the law was not clear and there
4 was thus no deliberate violation). In light of these changes, the Court would likely reduce any award of
5 PAGA penalties as “unjust, arbitrary and oppressive, or confiscatory” under Labor Code § 2699(i).
6 Hammond Decl. ¶ 50. LPU also contended that it was highly unlikely that the Court would award PAGA
penalties over \$200,000 more than the underlying damages (which Plaintiff calculated as \$346,987). *Id.*

7 Third, LPU contended that PAGA claims would be found unmanageable because only CMs who
8 actually incurred unpaid wages or unreimbursed expenses during a particular pay period could recover
9 PAGA penalties, and there is no manageable way to determine who was entitled to penalties. Hammond
10 Decl. ¶ 51; *Raphael v. Tesoro Ref & Mktg. Co.*, No. 2:15-cv-02862, 2015 U.S. Dist. LEXIS 130532, at
*5 (C.D. Cal. Sept. 25, 2015).

11 Further, in order to recover any PAGA penalties, Plaintiff would be required at trial to prove that
12 each Aggrieved Employee suffered a violation for each pay period the employee worked, which would
13 be difficult in light of Defendant’s contentions on the merits discussed above. Hammond Decl. ¶ 52.
14 *Cardenas v. McLane Foodservice, Inc.*, No. SACV 10-473, 2011 U.S. Dist. LEXIS 13126, *10 (C.D.
15 Cal. 2011) (“Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals
whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant.”).

16 **3. The Risk, Expense, Complexity and Likely Duration of Further Litigation Support**
17 **the Fairness and Reasonableness of the Settlement**

18 Defendant strongly disagreed as to the merits of Plaintiff’s claims and is convinced that Plaintiff
19 has no right to seek class-wide relief at all. Assuming some of the claims proceeded to trial, the losing
20 party would likely appeal, given that some of the central legal issues in this case have not been
21 conclusively addressed by an appellate court. This process would take years to resolve. Instead, this
22 settlement provides an early resolution of this dispute, and CMs will obtain a recovery in the relatively
near future if the settlement is finally approved.

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

24 As described in the Hammond Decl. and above, the parties were adequately informed to make the
25 decision to settle this case on the proposed terms. Hammond Decl. ¶¶ 13-20.

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

27 As discussed above, Class Counsel have extensive experience in class action litigation, and, in
28 particular wage-and-hour class actions on behalf of adjunct instructors, and have been determined by

1 numerous courts to be adequate class counsel. Hammond Decl. ¶¶ 5-11. Class Counsel have represented
2 thousands of adjunct instructors in over 28 similar unpaid wage cases since 2016, and recently
3 successfully litigated one such case all the way through trial. Id. These cases – challenging the long-
4 standing industry-wide practice of classifying adjuncts as non-exempt and not paying them for all hours
5 worked – have led to an overhaul of these practices in the industry. Hammond Decl. ¶ 6.

6 Class Counsel considers the settlement to be fair, reasonable and adequate. The average net
7 recovery per Adjunct CM is \$401.64, the average gross recovery is \$1,131.15, and an Adjunct CM who
8 worked the entire Adjunct Class Period can expect to receive approximately \$1,443.11. Hammond Decl.
9 ¶ 41. The average net recovery to Reimbursement CMs is \$177.54 net and \$500 gross, and a
10 Reimbursement CM who worked for the entire Reimbursement Class Period can expect to receive
11 approximately \$254.52. Id. ¶ 46. These amounts are significant and fair in light of Defendant’s potential
12 and actual defenses to Plaintiff’s claim, and CMs will obtain recovery now without the lengthy risks and
13 years of delay posed by further litigation. Id.

14 **6. Reaction of The Class to The Proposed Settlement**

15 It is premature to address this factor, since notice has not yet been sent out. The settlement,
16 however, confers substantial benefit on the Settlement Class Members and reasonably tailors each
17 Settlement Class Member’s claim to the amount he or she will receive. This promises an overall
18 favorable response.

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

20 Constitutional due process requires that Class Members be provided with notice sufficient to give
21 them an opportunity to be heard in the proceedings. *Mullane v. Central Hanover Bank & Trust*, 339 U.S.
22 306, 314 (1950). Proper notice must provide Class Members with sufficient information to make an
23 informed decision to accept or object to the settlement. *See id.*

24 In the instant case, the proposed Notice meets these standards since it provides all the information
25 a reasonable person would need to make a fully informed decision about the settlement. The proposed
26 Notice informs Class Members of (1) the material terms of the settlement, (2) the proposed fees and costs
27 of Class Counsel and for settlement administration, (3) the proposed enhancement award to the Named
28 Plaintiff; (4) how Class Members may opt out of, or object to the Settlement; (5) details about the court
hearing on settlement approval, and (6) how Class Members can obtain additional information. *See* Cal.
Rules of Court, Rule 3.766 and **Exhibit A** to the Settlement Agreement. In addition, the proposed Notice
contains information about each Class Member’s estimated award under the distribution formula (and

1 how they can challenge the data used in calculating their settlement awards), and the tax treatment and
2 possible tax consequences of their awards. Therefore, the Court should approve the Notice.

3 The procedure for distribution of notice meets the standard requiring that the notice has “a
4 reasonable chance of reaching a substantial percentage of the Class Members.” *Cartt v. Super. Ct.*, 50
5 Cal. App. 3d 960, 974 (1975). Here, the Notice will be sent by first class mail to the most recent address
6 of each Class Member and skip tracing will be employed for all Notices returned as undeliverable. (SA
7 § 7.4. As such, the Notice is likely to reach most, if not all, Class Members. Therefore, the Court should
8 approve the procedure/method for distribution of Notice.

9 **D. The Service Award to the Class Representative Is Reasonable**

10 Plaintiff will request an enhancement award of \$5,000 to recognize the time and effort he
11 expended on behalf of the Classes, the reputational risk associated with suing his employer, and the
12 general release he is giving Defendant. SA at § 3.2.1. The requested service award falls well within the
13 range of incentive payments typically awarded to Class Representatives in similar class actions. *See e.g.*,
14 *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming incentive awards of
15 \$10,000).

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

17 The Settlement designates Christian Legal Aid of Los Angeles as the *cy pres* beneficiary and
18 recipient of funds associated with any uncashed checks. SA § 4.4.3. Christian Legal Aid of Los Angeles
19 is a California religious non-profit corporation that provides free legal services to those in need.
20 Hammond Decl. ¶ 62.

21 **F. The Requested Attorneys’ Fees and Costs Are Reasonable**

22 In addition, Plaintiff’s counsel will request attorneys’ fees of not more than \$46,000 (*i.e.*, 1/3 of
23 the GSA). SA § 3.2.2. This fee percentage amount is fair, reasonable and is within the range typically
24 approved in similar class actions by California courts. *See, e.g., Laffitte v. Robert Half Internat’l Inc.*, 1
25 Cal. 5th 480, 487, 596 (2016) (affirming a fee award representing 33% of the fund). Plaintiff will also
26 request reimbursement of up to \$20,000 for actual out-of-pocket litigation costs incurred by Class
27 Counsel. Id.

28 **VI. CONCLUSION**

In summary, the settlement provides substantial relief for the Classes and is clearly within the
range of acceptable settlements. Accordingly, Plaintiff respectfully requests that the Court grant
preliminary approval of the Class and PAGA Settlement.

DATED: March 14, 2023

Respectfully submitted,



Julian Hammond
Attorneys for Plaintiff and the Putative Classes