

FILED
Superior Court of California
County of Los Angeles

JUL 25 2023

David W. Slayton, Executive Officer/Clerk of Court
By: N. Navarro, Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

ALBERT KNAPP and ELHAM
TABIBIAN, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

PEPPERDINE UNIVERSITY, a California
Non-Profit Corporation,

Defendant.

Case No.: 22SCTV16736

**ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: July 25, 2023

Time: 9:00 a.m.

Dept.: SSC-17

I. BACKGROUND

Plaintiffs Albert Knapp and Elham Tabibian sue their former employer,
Defendant Pepperdine University ("Defendant" or "Pepperdine"), for alleged wage and
hour violations. Defendant is a private non-profit university located in Malibu,

1 California. Plaintiffs allege that Pepperdine failed to fully reimburse its adjunct
2 instructors for business expenses associated with working remotely from home.
3 Plaintiffs seek to represent a class of adjunct instructors who worked remotely for
4 Pepperdine in California during the class period.

5 Plaintiffs filed this action on May 20, 2022, asserting claims for: (1) failure to
6 reimburse business expenses (Labor Code § 2802); and (2) unfair, unlawful, or
7 fraudulent business practices (Bus. & Prof. Code § 17200, et seq.). On September 7,
8 2022, Plaintiffs filed a First Amended Complaint adding a claim for civil penalties
9 under the Private Attorneys General Act (Labor Code § 2699) (“PAGA”).

10 On January 10, 2023, the parties participated in a mediation session with Lisa
11 Klerman. At the end of the full-day mediation, Ms. Klerman made a mediator’s
12 proposal, which the parties accepted. The terms of settlement were finalized in the
13 Class Action and PAGA Settlement Agreement, a copy of which was attached to the
14 Proposed Order Granting Preliminary Approval of Class Action Settlement filed with
15 the Court on February 28, 2023 as Exhibit 1.

16 The matter came on for hearing on June 20, 2023 following the issuance by the
17 Court on June 16, 2023 of a “Checklist” of issues requiring attention. Following
18 hearing the parties submitted on July 6, 2023 the Supplemental declaration of Julian
19 Hammond and a revised Settlement Agreement attached to the Declaration of
20 Hammond as Exhibit 1. All references below are to that Agreement. ____

21 **II. THE TERMS OF THE SETTLEMENT**

22 **A. SETTLEMENT CLASS AND RELATED DEFINITIONS**

23 “Class” means all adjunct instructors who worked remotely for Defendant in
24 California during the Class Period. (¶1.5)
25

1 "Class Period" means the period from May 20, 2018 to the date of Preliminary
2 Approval. (§1.12)

3 "Aggrieved Employee" means all adjunct instructors who worked remotely for
4 Defendant in California during the PAGA Period. (§1.4)

5 "PAGA Period" means May 20, 2021 to the date of Preliminary Approval.
6 (§1.32)

7 "Participating Class Member" means a Class Member who does not submit a
8 valid and timely Request for Exclusion. (§1.36)

9 10 **B. THE MONETARY TERMS OF SETTLEMENT**

11 The essential monetary terms are as follows:

- 12 • The Gross Settlement Amount ("GSA") is **\$407,000** (§3.1). This includes
13 payment of a PAGA penalty of **\$25,000** to be paid 75% to the LWDA (\$18,750)
14 and 25% to the Aggrieved Employees (\$6,250) (§3.2.7).
 - 15 ○ Escalator Clause: The Class worked approximately 24,178 months in the
16 period from May 20, 2018 to May 31, 2023. If the number of months
17 worked by the Class during the time period between May 20, 2018 to
18 May 31, 2023 is five percent (5%) more than 24,178 (i.e., 25,388 or
19 more), then the Gross Settlement will increase proportionately over the
20 5%. For example, if the number of work months is 7% higher than
21 24,178, or 25,870, the Gross Settlement amount will increase by 2%. (§8)
- 22 • The Net Settlement Amount ("NSA") (**\$184,550**) is the GSA less:
 - 23 ○ Up to **\$142,450** (35%) for attorney fees (§3.2.2);
 - 24 ○ Up to **\$20,000** for attorney costs (*Ibid.*);

- Up to **\$15,000 total [\$7,500 each]** for service awards to the proposed class representatives (§3.2.1); and
 - Up to **\$20,000** for settlement administration costs (§3.2.3).
- Assuming the Court approves all maximum requested deductions, approximately \$184,550 will be available for automatic distribution to participating class members. Assuming full participation, the average settlement share will be approximately \$126.66. ($\$184,550 \text{ Net} \div 1,457 \text{ class members} = \126.66). In addition, each Aggrieved Employee will receive a portion of the PAGA penalty, estimated to be \$6.27 per Aggrieved Employee. ($\$6,250 \text{ or } 25\% \text{ of } \$25,000 \text{ PAGA penalty} \div 996 \text{ Aggrieved Employees} = \6.27).
- There is no Claim Requirement (§3.1).
- The settlement is not reversionary (§3.1).
- Individual Settlement Share Calculation: Class Members shall be paid out of the NSA pro rata based on the number of pay periods worked as a Class Member during the Class Period. Defendant's payroll records shall be determinative for purposes of calculating the number of pay periods. (§3.2.4) Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis. (§3.2.6)
- PAGA Payment Calculation: The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b)

1 multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods.
2 (§3.2.7.1)

- 3 • Tax Withholdings: Payments from the NSA will be allocated 100% Non-Wage
4 Portion that are not subject to wage withholdings and will be reported on IRS
5 1099 Forms. (§3.2.5). The Administrator will report the Individual PAGA
6 Payments on IRS 1099 Forms. (§3.2.7.2)
- 7 • Funding of Settlement: Within 10 business days of the Effective Date, Defendant
8 shall transmit the GSA to the Settlement Administrator. (§4.3)
- 9 • Distribution: Within 14 business days after Defendant funds the Gross
10 Settlement Amount, the Administrator will mail checks or initiate wire transfers
11 for all Individual Class Payments, all Individual PAGA Payments, the LWDA
12 PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees
13 Payment, the Class Counsel Litigation Expenses Payment, and the Class
14 Representative Service Payment. Disbursement of the Class Counsel Fees
15 Payment, the Class Counsel Litigation Expenses Payment and the Class
16 Representative Service Payment shall not precede disbursement of Individual
17 Class Payments and Individual PAGA Payments. (§4.4)
- 18 • Uncashed Settlement Payment Checks: The face of each check shall prominently
19 state the date (180 days after the date of mailing) when the check will be voided.
20 (§4.4.1) For any Class Member whose Individual Class Payment check or
21 Individual PAGA Payment check is uncashed and cancelled after the void date,
22 the Administrator shall transmit the funds represented by such checks in
23 conformity with Code of Civil Procedure Section 384, subd. (b) to Bet Tzedek
24 ("Cy Pres Recipient"). (§4.4.3) The Parties, Class Counsel and Defense Counsel
25 represent that they have no interest or relationship, financial or otherwise, with

1 the intended Cy Pres Recipient. (Decl. of Albert Knapp ¶5; Decl. of Elham
2 Tabibian ¶5; Decl. of Julian Hammond ¶32; Decl. of Elaine M. Vukadinovich
3 ¶2; Decl. of Phil E. Phillips ¶2.)

4 5 **C. TERMS OF RELEASES**

- 6 • Release of Claims: Upon the date of the funding by Pepperdine of the Gross
7 Settlement Amount, Plaintiffs, Class Members, and Class Counsel will release
8 claims against all Released Parties as follows: (¶5)
- 9 • Release of Class Claims: Each and all Participating Class Members, on behalf of
10 themselves and their respective former and present representatives, agents,
11 attorneys, heirs, administrators, successors, and assigns, shall be deemed to
12 release the Released Parties from all claims that were alleged, or reasonably
13 could have been alleged, based on the Class Period facts stated in the Operative
14 Complaint, and ascertained in the course of the Action including any and all
15 claims arising under Labor Code § 2802, Business and Professions Code 17200
16 et seq.. Participating Class Members do not release any other claims, including
17 claims for vested benefits, wrongful termination, violation of the Fair
18 Employment and Housing Act, unemployment insurance, disability, social
19 security, workers' compensation, or claims based on facts occurring outside the
20 Class Period. (¶5.1)
- 21 • PAGA Released Claims: Each and all Aggrieved Employee, on behalf of
22 themselves and their respective former and present representatives, agents,
23 attorneys, heirs, administrators, successors, and assigns, shall be deemed to
24 release the Released Parties from all claims for PAGA penalties that were
25 alleged, or reasonably could have been alleged, based on the PAGA Period facts

1 stated in the Operative Complaint and in the PAGA Notice and ascertained in the
2 course of the Action. (¶5.2)

- 3 ○ “PAGA Notice” means Plaintiff’s May 20, 2022 PAGA letter to
4 Defendant and the LWDA providing notice pursuant to Labor Code
5 section 2699. (¶1.34)

- 6 • “Released Parties” means Defendant and each of its past and present
7 accountants, insurers, attorneys, agents, trustees, governing board, Regents,
8 affiliated companies, successors, heirs, advisors, employees, directors, officers,
9 both individually and in their official capacities, as well as all persons acting by,
10 under, or in concert with those persons or entities. (¶1.42)
- 11 • The named Plaintiffs will also provide a general release and a waiver of the
12 protections of Cal. Civ. Code §1542. (¶5.3)
- 13 • The releases are effective on the date when Defendant fully funds the Gross
14 Settlement Amount, which will occur within 10 business days of the Effective
15 Date. (¶4.3)

16 **D. SETTLEMENT ADMINISTRATION**

- 17 • The proposed Settlement Administrator is Simpluris, Inc. (¶1.2), which has
18 provided evidence that no counsel are affiliated with it and that it has adequate
19 procedures in place to safeguard the data and funds to be entrusted to it. (See
20 Declaration of Eric Springer.)
- 21 • Settlement administration costs are estimated to be \$15,000 (Springer Decl. ¶13)
22 and are capped at \$20,000 in the settlement agreement (¶3.2.3).
- 23 • Notice: The manner of giving notice is described below.

- Opt Out/Objection Dates: "Response Deadline" means 45 days after the Administrator mails Class Notice Packet to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired. (§1.44) The same deadline applies to the submission of workweek disputes. (§7.6)
 - Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.2 of this Agreement and are eligible for an Individual PAGA Payment. (§7.5.4)
 - If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% or more of the Class, Defendant may, but is not obligated to, elect to withdraw from the Settlement. (§9)
- Notice of Final Judgment will be posted on the Settlement Administrator's website (§7.8.1).

III. SETTLEMENT STANDARDS AND PROCEDURE

California Rules of Court, rule 3.769(a) provides: "A settlement or compromise of an entire class action, or of a cause of action in a class action, or as to a party, requires the approval of the court after hearing." "Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the

1 motion, and the proposed order must be lodged with the motion.” See Cal. Rules of
2 Court, rule 3.769(c).

3 “In a class action lawsuit, the court undertakes the responsibility to assess
4 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or
5 dismissal of a class action. The purpose of the requirement [of court review] is the
6 protection of those class members, including the named plaintiffs, whose rights may not
7 have been given due regard by the negotiating parties.” *Consumer Advocacy Group,*
8 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal
9 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
10 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)
11 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement
12 agreement to the extent necessary to reach a reasoned judgment that the agreement is
13 not the product of fraud or overreaching by, or collusion between, the negotiating
14 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
15 concerned.”] [internal quotation marks omitted].

16 “The burden is on the proponent of the settlement to show that it is fair and
17 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
18 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
19 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
20 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
21 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

22 Notwithstanding an initial presumption of fairness, “the court should not give
23 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
24 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
25 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*

1 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
2 members, the court must independently and objectively analyze the evidence and
3 circumstances before it in order to determine whether the settlement is in the best
4 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
5 In that determination, the court should consider factors such as “the strength of
6 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
7 the risk of maintaining class action status through trial, the amount offered in
8 settlement, the extent of discovery completed and stage of the proceedings, the
9 experience and views of counsel, the presence of a governmental participant, and the
10 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
11 factors is not exclusive and the court is free to engage in a balancing and weighing of
12 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
13 245.

14 At the same time, “[a] settlement need not obtain 100 percent of the damages
15 sought in order to be fair and reasonable. Compromise is inherent and necessary in the
16 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is
17 substantially narrower than it would be if the suits were to be successfully litigated,’
18 this is no bar to a class settlement because ‘the public interest may indeed be served by
19 a voluntary settlement in which each side gives ground in the interest of avoiding
20 litigation.’” *Id.* at 250.

21 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

22 **A. THERE IS A PRESUMPTION OF FAIRNESS**

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25 The settlement is entitled to a presumption of fairness for the following reasons:

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1. The settlement was reached through arm's-length bargaining

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On January 10, 2023, the parties participated in a mediation session with Lisa Klerman. At the end of the full-day mediation, Ms. Klerman made a mediator's proposal, which the parties accepted. (Declaration of Julian Hammond ("Hammond Decl.") ¶¶12-13.)

2. The investigation and discovery were sufficient

Plaintiff's counsel represents that after the action was filed, the parties agreed to mediate, stay formal discovery, and exchange informal discovery. Defendant produced data points including the class size (1,457) and number of Aggrieved Employees (996); months worked by the Class during the Class Period (24,178) and PAGA Period (11,301); and the dollar amount Defendant reimbursed Class Members for remote work expensed during the Class Period (\$203,160.57). (*Id.* at ¶11.) Counsel represents that the class worked 22,777 months between the start of the Class Period and January 2023; and 9,291 months between the start of the PAGA Period and January 2023, for which Plaintiffs extrapolated both of these numbers out to May 31, 2023 as the estimated end date of the Class Period. (*Id.* at ¶11, fn 1.)

Defendant also produced communications with faculty members regarding the shift to remote work in March 2020 and the campus reopening in August 2021; documents related to campus accessibility during the COVID-19 shutdown; and expense reimbursement policies applicable to Class Members including its Covid-19 technology stipend policy. Plaintiffs also located relevant publicly available information from Defendant's website, and reviewed documents provided by Plaintiffs. (*Id.* at ¶11.)

1 Counsel estimated exposure based on annual surveys published by the Bureau of
2 Labor Statistics (“BLS”), the Federal Communications Commissions (“FCC”) and the
3 U.S. Energy Information Administration (“EIA”). These surveys include the average
4 cost of consumer home internet, cellular phone, and electricity nationally and in
5 California. According to the FCC surveys issued between 2018 and 2023 (i.e., the years
6 covered by the Class Period in this case), the average monthly cost of home internet in
7 California, during that Class Period, was \$78.81. According to the BLS’ Consumer
8 Price Index issued between 2018 and 2023, the average monthly cell phone bill, during
9 the Class Period, was \$47.55. According to the EIA, the average monthly electricity bill
10 in California in 2021 (in the middle of the Class Period) was \$123.67. Thus, Plaintiffs
11 estimated that the average potential monthly cost to Class Members of home internet
12 and cellular phone was \$126.36, and electricity was \$123.67. Plaintiffs estimated that
13 approximately 35% of Class Members’ monthly cell phone and internet costs were
14 incurred working remotely for Pepperdine because Class Members, who were part-time
15 instructors, worked on average 12 to 16 hours per week for Pepperdine, which is 35%
16 of a 40-hour work week. Plaintiffs also estimated that only approximately 20% of the
17 electricity costs were incurred teaching remotely for Pepperdine, because electricity
18 usage is more consistent during the week than cell phone and internet usage (which is
19 only used during waking hours). Thus, Plaintiffs calculated that Class Members
20 incurred approximately \$44.23 per month in cell phone and internet work-related costs,
21 and approximately \$24.73 per month in electricity work-related costs, or an average of
22 \$68.96 per month. Plaintiffs rounded up to \$70 as the average monthly costs incurred
23 by Class Members. Supp. Hammond Dec. ¶8.

24 In total this information is sufficient to value the case for settlement purposes.
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1 **3. Counsel is experienced in similar litigation**

2 Class Counsel represent that they are experienced in class action litigation,
3 including wage and hour class actions. (Hammond Dec. at Exhibit 1.)

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5 **4. Percentage of the class objecting**

6 This cannot be determined until the final fairness hearing. Weil & Brown et al.,
7 Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 [“Should
8 the court receive objections to the proposed settlement, it will consider and either sustain
9 or overrule them at the fairness hearing.”].

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11 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED**
12 **FAIR, ADEQUATE, AND REASONABLE**

13 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
14 entirety. The evaluation of any settlement requires factoring unknowns. “As the court
15 does when it approves a settlement as in good faith under Code of Civil Procedure
16 section 877.6, the court must at least satisfy itself that the class settlement is within the
17 ‘ballpark’ of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)
18 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to
19 consider and weigh the nature of the claim, the possible defenses, the situation of the
20 parties, and *the exercise of business judgment* in determining whether the proposed
21 settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation*, *supra*, 495 F.2d at p.
22 462, *italics added.*)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).

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1. Amount Offered in Settlement

The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Id.* at 130.)

Class Counsel estimated Defendants’ maximum exposure at \$4,122,612 and realistic exposure at \$670,468, based on the following analysis:

Violation	Maximum Exposure	Realistic Exposure
Reimbursement Claim	\$1,862,412.00	\$670,468.00
PAGA Penalties	\$2,260,200.00	
Total	\$4,122,612.00	\$670,468.00

(Hammond Decl. ¶¶14-25.)

Class Counsel obtained a gross settlement valued at \$407,000. This is approximately 9.9% of Defendant’s maximum exposure inclusive of PAGA penalties, and 60.7% of Defendant’s realistic exposure excluding PAGA penalties. Given that Defendant had a written reimbursement policy and in fact made reimbursements during the class period the likelihood of maximum PAGA penalties is appropriately discounted, as is the likelihood of a maximal recovery.

2. The Risks of Future Litigation

The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members. Even if a class is certified, there is always a risk of decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 [“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety

1 of a class action is not appropriate.”].) Further, the settlement was negotiated and
2 endorsed by Class Counsel who, as indicated above, are experienced in class action
3 litigation. Based upon their investigation and analysis, the attorneys representing
4 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and
5 adequate. (Settlement Agreement ¶2.10.)

6 The Court also notes that Plaintiffs bring a PAGA claim on behalf of the LWDA,
7 which was sent a copy of the Settlement Agreement on February 28, 2023 and has not yet
8 objected. (Proof of Service on the LWDA filed February 28, 2023 and July 6, 2023.)
9 Any objection by it will be considered at the final fairness hearing.

10 11 **3. The Releases Are Limited**

12 The Court has reviewed the Releases to be given by the absent class members and
13 the named plaintiffs. The releases, described above, are tailored to the pleadings and
14 release only those claims in the pleadings. There is no general release by the absent
15 class. The named plaintiffs’ general releases are appropriate given that each was
16 represented by counsel in its negotiation.

17 18 **4. Conclusion**

19 Class Counsel estimated Defendant’s maximum exposure at \$4,122,612 and
20 realistic exposure at \$670,468. Class Counsel obtained a gross settlement valued at
21 \$407,000. This is approximately 9.9% of Defendant’s maximum exposure inclusive of
22 PAGA penalties, and 60.7% of Defendant’s “realistic” exposure, excluding PAGA
23 penalties, which, given the uncertain outcomes, including the potential that the class
24 might not be certified, that liability is a contested issue, and that the full amount of
25

1 penalties would not necessarily be assessed even if the class is certified and liability
2 found, the settlement is within the “ballpark of reasonableness.”

3 4 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED.**

5 A detailed analysis of the elements required for class certification is not required,
6 but it is advisable to review each element when a class is being conditionally certified.

7 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party
8 advocating class treatment must demonstrate the existence of an ascertainable and
9 sufficiently numerous class, a well-defined community of interest, and substantial
10 benefits from certification that render proceeding as a class superior to the alternatives.”
11 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

12 **1. The Proposed Class is Numerous**

13 There are approximately 1,457 putative Class Members. (Hammond Decl. ¶11.)
14 Numerosity is established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund*
15 *Cases* (2018) 25 Cal.App.5th 369, 393: stating that the “*requirement that there be many*
16 *parties to a class action is liberally construed,*” and citing examples wherein classes of
17 as little as 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v.*
18 *Colgrove* (1972) 28 Cal.App.3d 1017, were upheld).

19 **2. The Proposed Class Is Ascertainable**

20 “A class is ascertainable, as would support certification under statute
21 governing class actions generally, when it is defined in terms of objective
22 characteristics and common transactional facts that make the ultimate identification
23 of class members possible when that identification becomes necessary.” *Noel v. Thrifty*
24 *Payless, Inc.* (2019) 7 Cal.5th 955, 961 (*Noel*).

1 The class is defined above. Class Members are ascertainable through
2 Defendants' records. (Hammond Decl. ¶11.)

3 **3. There Is A Community of Interest**

4 "The community of interest requirement involves three factors: '(1) predominant
5 common questions of law or fact; (2) class representatives with claims or defenses typical
6 of the class; and (3) class representatives who can adequately represent the class.'"

7 *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

8 As to predominant questions of law or fact, Plaintiffs contend that common
9 questions of law and fact predominate as Settlement Class Members performed their
10 work remotely either because they were assigned online courses or as a result of the
11 Covid-19 campus closure. Plaintiffs contend that whether Pepperdine's alleged failure to
12 reimburse SCMs for other remote-work expenses violated Labor Code § 2802 is a
13 common legal question. Plaintiffs contend that common factual questions include
14 whether Settlement Class Members performed work duties remotely during the Class
15 Period, and whether Settlement Class Members reasonably incurred remote work
16 expenses in carrying out their job duties for Defendant. (Memo ISO Prelim at 4:16-21.)

17 As to typicality, Plaintiffs assert that their claims are typical because, like the
18 Class, they were adjunct professors who taught remotely and incurred out-of-pocket
19 expenses. Plaintiffs assert that they were subject to the same alleged unlawful practice by
20 Defendant as alleged by the rest of the Class, and seek the same relief as the Class. (*Id.* at
21 4:23-26.)

22 As to adequacy, each Plaintiff represents that he is aware of the duties of serving
23 as class representative and does not have conflicts of interest with the class. (Declaration
24 of Albert Knapp ¶¶4-5; Declaration of Elham Tabibian ¶¶4-5.) As previously stated,
25 Class Counsel have experience in class action litigation.

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2 **4. Substantial Benefits Exist**

3 Given the relatively small size of the individual claims, a class action is superior to
4 separate actions by the class members.

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6 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS**
7 **OF DUE PROCESS**

8 The purpose of notice is to provide due process to absent class members. A practical
9 approach is required, in which the circumstances of the case determine what forms of
10 notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California
11 Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the
12 court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the
13 stake of the individual class members; (4) the cost of notifying class members; (5) the
14 resources of the parties; (6) the possible prejudice to class members who do not receive
15 notice; and (7) the res judicata effect on class members.

16 **1. Method of class notice**

17 Not later than 15 days after the Court grants Preliminary Approval of the
18 Settlement, Defendants will deliver the Class Data to the Administrator, in the form of a
19 Microsoft Excel spreadsheet. (¶4.2) Using best efforts to perform as soon as possible,
20 and in no event later than 14 days after receiving the Class Data, the Administrator will
21 send to all Class Members identified in the Class Data, via first-class United States
22 Postal Service ("USPS") mail, the Class Notice. Before mailing Class Notices, the
23 Administrator shall update Class Member addresses using the National Change of
24 Address database. (¶7.4.2)

1 Not later than 3 business days after the Administrator's receipt of any Class
2 Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class
3 Notice using any forwarding address provided by the USPS. If the USPS does not
4 provide a forwarding address, the Administrator shall conduct a Class Member Address
5 Search, and re-mail the Class Notice to the most current address obtained. The
6 Administrator has no obligation to make further attempts to locate or send Class Notice
7 to Class Members whose Class Notice is returned by the USPS a second time. (§7.4.3)

8 The deadlines for Class Members' written objections, challenges to Pay Periods,
9 and Requests for Exclusion will be extended an additional 14 days beyond the 45 days
10 otherwise provided in the Class Notice for all Class Members whose notice is re-
11 mailed. The Administrator will inform the Class Member of the extended deadline with
12 the re-mailed Class Notice. (§7.4.4)

13 **2. Content of class notice.**

14 A copy of the proposed class notice is attached to the amended Settlement
15 Agreement as Exhibit A. The notice includes information such as: a summary of the
16 litigation; the nature of the settlement; the terms of the settlement agreement; the
17 maximum deductions to be made from the gross settlement amount (i.e., attorney fees
18 and costs, the enhancement award, and claims administration costs); the procedures and
19 deadlines for participating in, opting out of, or objecting to, the settlement; the
20 consequences of participating in, opting out of, or objecting to, the settlement; and the
21 date, time, and place of the final approval hearing. See Cal Rules of Court, rule
22 3.766(d). It is to be given in English only, as Defendant's Chief Operating Officer
23 represents that all putative class members are proficient in English. (Decl. of Phil E.
24 Phillips ¶5.)

25 //

3. Settlement Administration Costs

Settlement administration costs are capped at **\$20,000**, including the cost of notice (§3.2.3). Prior to the time of the final fairness hearing, the settlement administrator must submit a declaration attesting to the total costs incurred and anticipated to be incurred to finalize the settlement for approval by the Court.

E. ATTORNEY FEES AND COSTS

California Rule of Court, rule 3.769(b) states: “Any agreement, express or implied, that has been entered into with respect to the payment of attorney fees or the submission of an application for the approval of attorney fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action.”

Ultimately, the award of attorney fees is made by the court at the fairness hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122, 1132-1136. In common fund cases, the court may use the percentage method. If sufficient information is provided a cross-check against the lodestar may be conducted. *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. Despite any agreement by the parties to the contrary, “the court ha[s] an independent right and responsibility to review the attorney fee provision of the settlement agreement and award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular Telephone Company* (2004) 118 Cal.App.4th 123, 128.

The question of class counsel’s entitlement to **\$142,450** (35%) in attorney fees will be addressed at the final fairness hearing when class counsel brings a noticed

1 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
2 the court with current market tested hourly rate information and billing information so
3 that it can properly apply the lodestar method and must indicate what multiplier (if
4 applicable) is being sought.

5 Class counsel should also be prepared to justify the costs sought (capped at
6 **\$20,000**) by detailing how they were incurred.

7 8 **F. SERVICE AWARDS**

9 The Settlement Agreement provides for a service award of up to **\$7,500 each** for
10 the class representatives. Trial courts should not sanction enhancement awards of
11 thousands of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours
12 expended, ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the
13 form of quantification of time and effort expended on the litigation, and in the form of
14 reasoned explanation of financial or other risks incurred by the named plaintiffs, is
15 required in order for the trial court to conclude that an enhancement was ‘necessary to
16 induce [the named plaintiff] to participate in the suit’” *Clark v. American*
17 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in
18 original.

19 In connection with the final fairness hearing, named Plaintiffs must submit a
20 declaration attesting to why they should be compensated for the expense or risk they
21 have incurred in conferring a benefit on other members of the class. *Id.* at 806. The
22 Court will decide the issue of the enhancement award at the time of final approval.

23 24 **V. CONCLUSION AND ORDER**

25 The Court hereby:

- 1 (1) Grants preliminary approval of the settlement as fair, adequate, and
2 reasonable;
- 3 (2) Grants conditional class certification;
- 4 (3) Appoints Albert Knapp and Elham Tabibian as Class Representatives;
- 5 (4) Appoints HammondLaw, P.C. as Class Counsel;
- 6 (5) Appoints Simpluris, Inc. as Settlement Administrator;
- 7 (6) Approves the proposed notice plan; and
- 8 (7) Approves the proposed schedule of settlement proceedings as follows:
- 9 • Preliminary approval hearing: July 25, 2023
 - 10 • Deadline for Defendant to provide class list to settlement administrator: August
11 9, 2023 (within 15 days from preliminary approval)
 - 12 • Deadline for settlement administrator to mail notices: August 23, 2023 (within
13 14 days after receiving the Class Data)
 - 14 • Deadline for class members to opt out: October 9, 2023 (45 calendar days from
15 the initial mailing of the Notice Packets and assuming no remailing)
 - 16 • Deadline for class members to object: October 9, 2023 (45 calendar days from
17 the initial mailing of the Notice Packets and assuming no remailing)
 - 18 • Deadline for class counsel to file motion for final approval: November 9, 2023
19 (16 court days prior to final fairness hearing)
 - 20 • Final fairness hearing: December 6, 2023 at 9:00 a.m.

21
22 Dated: 7/25/2023



23 MAREN E. NELSON

24 Judge of the Superior Court